Laws, Memorials, and Resolutions

OF THE

TERRITORY OF MONTANA,

PASSED AT THE

TENTH REGULAR SESSION

OF THE

LEGISLATIVE ASSEMBLY,

HELD AT THE TOWN OF HELENA, THE CAPITAL OF THE SAID TERRITORY, COMMENCING JANUARY 8, A. D. 1877, AND ENDING FEBRUARY 16, A. D. 1877.

TO WHICH ARE PREFIXED

THE CONSTITUTION OF THE UNITED STATES AND THE ORGANIC ACT AND AMENDMENTS THERETO OF THE TERRITORY.

PUBLISHED BY AUTHORITY.

DAILY AND WEEKLY HERALD,
HELENA, MONTANA:
ROBERT E. FISK, PUBLIC PRINTER.
1877.

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CERTIFICATE OF AUTHENTICATION.

TERRITORY OF MONTANA,
SECRETARY'S OFFICE, } ss.

I, JAMES E. CALLAWAY, Secretary of the Territory of Montana, do hereby certify that the printed laws, joint memorials, and joint resolutions contained in this volume are true, correct, and full copies of all the enrolled laws, joint memorials, and joint resolutions that were passed at the tenth regular session of the Legislative Assembly of said Territory, begun and held at the town of Helena, the capital of said Territory, on the 8th day of January, A. D. 1877, and ending on the 16th day of February, A. D. 1877, with the exceptions of corrections in orthography, punctuation, and omissions inserted in brackets.

In testimony whereof I have hereunto set my hand and affixed the great seal of said Territory. Done at the town of Helena, [SEAL.] the capital of said Territory of Montana, this 26th day of February, A. D. 1877.

J. E. CALLAWAY, *Secretary.*

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[NOTE.—The laws are arranged in alphabetical order.]

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CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SEC. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representative and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and including Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the

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United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation of any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SEC. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into the three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year, and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation.

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When the president of the United States is tried, the chief justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SEC. 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SEC. 5. Each house shall be the judge of elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secresy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective

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houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such consideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on the question of adjournment), shall be presented to the president of the United States; and before the same shall take effect shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. 8. The congress shall have power—

To lay and collect taxes, duties, imposts, and excises, to pay the

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debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasion;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by session of particular states and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in

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which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution and government of the United States, or in any department or officer thereof.

SEC. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SEC. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net products of all duties and imposts, laid by any state on imports or exports, shall

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be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States shall be appointed an elector.

[*The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such a majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president. But in choosing the president the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the

*Annulled. See 12th Amendment.

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states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of president the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SEC. 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties

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of their respective offices, and he shall have the power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senate present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

SEC. 3. He shall from time to time give to the congress such information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws are faithfully executed, and shall commission all the officers of the States.

SEC. 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their office during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

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SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; [*between a state and citizens of another state;] between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the congress may make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

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*Annulled. See 11th Amendment.

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SEC. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state under the laws thereof, escaping to another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SEC. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SEC. 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them from invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year

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one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

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AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES.

ARTICLE I.

Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the conset of the owner, nor in time of war but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the

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militia when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value at controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined by any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

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ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other unconstitutional disability of the president.

The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a

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majority, then from the two highest numbers on the list the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature therof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of citizens twenty-one years of age in such state.

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SEC. 3. No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including the debts incurred for payment of pension and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims, shall held illegal and void.

SEC. 5. That congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

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ORGANIC ACT

OF THE

TERRITORY OF MONTANA.

(PUBLIC, No. 76.)

AN ACT to provide a temporary government for the Territory of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

That all that part of the territory of the United States included within the limits, to-wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along the said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence due west along said forty-fourth degree and thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky Mountains; thence following the crest of the Rocks Mountains northward till its intersection with the Bitter Root Mountains; thence northward along the crest of said Bitter Root Mountains to its intersection with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along said boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along said twenty-seventh degree of

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longitude to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Montana: *Provided,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory or changing its boundaries in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Provided, further,* That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which by treaty with any Indian tribes is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the territory of Montana, until said tribe shall signify their assent to the president of the United States to be included within said territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed.

SEC. 2. *And be it further enacted,* That the executive power and authority in and over said territory of Montana shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory and shall be commander in chief of the militia and superintendent of Indian affairs thereof. He may grant pardons and respites for offenses against the laws of said territory, and reprieve for offenses against the laws of the United States, until the decision of the president of the United States can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted,* That there shall be a secretary of said territory, who shall reside therein and hold his office for four years, unless sooner removed by the president of the United

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States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted,* That the legislative power and authority of the said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of seven members having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall, at its first session, consist of thirteen members, possessing the some qualifications as prescribed for the members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the council, in like manner, to thirteen. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district, or county, or counties, for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as the governor shall designate and appoint, and

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the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts, respectively, for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives in each of said representative districts, respectively, shall be declared by the governor to be duly elected members of said house: *Provided,* That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of commencement of the regular sessions of the legislative assembly: *Provided,* That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

SEC. 5. *And be it further enacted,* That all citizens of the United States, and those who have declared their intention to become such, and who are otherwise described and qualified under the fifth section of the act of congress providing for a temporary government for the territory of Idaho, approved March third, eighteen hundred and sixty-three, shall be entitled to vote at said first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

SEC. 6. *And be it further enacted,* That the legislative power of the territory shall extend to all rightful subjects of legislation con-

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sistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Each bill which shall have passed the council and house of representatives of the said territory, shall, before it becomes a law, be presented to the governor of the territory. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of such houses shall be determined by yeas and nays, to be entered on the journals of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law: *Provided*, That whereas slavery is prohibited in said territory by act of congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory of Montana. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for, and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for the members of the council and house of representatives and all other officers.

SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall

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have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly. And no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly; or shall hold any office under the government of said territory.

SEC. 9. *And be it further enacted,* That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be limited by law: *Provided,* That justices of the peace shall not have jurisdiction of any matter in controversy when the title of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law. The supreme court, or the justices thereof, shall appoint its own clerk; and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of

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the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States as is vested in the district and circuit courts of the United States; and the first six days of every term of said court, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all such cases shall be made to the supreme court of said territory the same as in other cases. The said clerks shall receive in all such cases the same fees which the clerks of the district courts of Washington territory now receive for similar service.

SEC. 10. *And be it further enacted,* That there shall be appointed an attorney for said territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Washington. There shall also be a marshal for the territory appointed, who shall hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and districts of the United States. He shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present territory of Washington, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services. There shall also be appointed by the president of the United States, by and with the advice and consent of the senate, a surveyor general

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of said territory, who shall locate his office at such place as the secretary of the interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor general of New Mexico, under the direction of the secretary of the interior, and such instructions as he may from time to time deem it advisable to give.

SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice and associate justices, attorney and marshal, shall be appointed by the president of the United States, by and with the advice and consent of the senate. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned or qualified, or before the chief justice or some associate justice of the supreme court of the United States, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified and recorded in such manner and form as may be prescribed by law. And any person who has heretofore been appointed chief justice or associate justice of the territory of Idaho, who has not yet taken the oath of office, as prescribed by the act organizing said territory, may take said oath or affirmation before the chief justice or some associate justice of the supreme court of the United States. The governor shall receive an annual salary of two thousand five hundred dollars; the chief justice and associate justices shall receive

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an annual salary of two thousand five hundred dollars; the secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly from the dates of the respective appointments, at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each per day during their attendance at the sessions thereof, and four dollars each for every twenty miles travel in going to and returning from said sessions, estimated according to the nearest usually traveled routes; an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing clerk, and one enrolling clerk, a sergeant-at-arms, and door-keeper, may be chosen for each house; and the chief clerk shall receive four dollars per day, and said other officers three dollars per day, during the session of the legislative assembly; but no other officers shall be paid by the United States: *Provided,* That there shall be but one session of the legislative assembly annually, unless on an extraordinary occasion the governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum to be expended by the governor to defray the contingent expenses of the territory, including the salary of the clerk of the executive department. And there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses. And the governor and secretary of the territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall semi-annually account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 12. *And be it further enacted,* That the legislative assembly

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of the territory of Montana shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government at such place as they may deem eligible: *Provided*, That the seat of government fixed by the governor and legislative assembly shall not be at any time changed except by an act of the said assembly duly passed, and which shall be approved, after due notice, at the first general election thereafter by a majority of the legal votes cast on that question.

SEC. 13. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives; but the delegate first elected shall hold his seat only during the term of the congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the time and places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. That the constitution and all the laws of the United States which are not locally inapplicable shall have the same force and effect within the said Montana territory as elsewhere within the United States.

SEC. 14. *And be it further enacted*, That when the lands in said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

SEC. 15. *And be it further enacted*, That, until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be ap-

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pointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or sub-divisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

SEC. 16. *And be it further enacted,* That all officers to be appointed by the president of the United States, by and with the advice and consent of the senate, for the territory of Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give such security at such time and in such manner as the secretary of the treasury may prescribe.

SEC. 17. *And be it further enacted,* That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the president of the United States may, at his discretion, change the location of the office of said agencies or superintendents.

SEC. 18. *And be it further enacted,* That until congress shall otherwise direct, all that part of the territory of Idaho included within the following boundaries, to-wit: Commencing at a point formed by the intersection of the thirty-third degree of longitude west from Washington with the forty-first degree of north latitude; thence along said thirty-third degree of longitude to the crest of the Rocky Mountains; thence northward along the said crest of the Rocky Mountains to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence eastward along said forty-fourth degree and thirty minutes north latitude to the thirty-fourth degree of longitude west from Washington; thence northward along said thirty-fourth degree of longitude to its intersection with the forty-fifth degree north latitude; thence eastward along

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said forty-fifth degree of north latitude to its intersection with the twenty-seventh degree of longitude west from Washington; thence south along said twenty-seventh degree of longitude west from Washington, to the forty-first degree north latitude; thence west along said forty-first degree north latitude to the place of beginning—shall be and is hereby incorporated temporarily into and made part of the territory of Dakota.

Approved May 26, 1864.

DEPARTMENT OF STATE,
WASHINGTON, May 28, 1864.

A true copy:

W. H. HUNTER, *Chief Clerk.*

(PUBLIC, No. 65.)

AN ACT amendatory of "An Act to provide a temporary government for the Territory of Montana," approved May 26, 1864.

Be it Enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

That the legislative assemblies of the several territories of the United States shall not, after the passage of this act, grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies incorporate for mining, manufacturing, and other industrial pursuits.

SEC. 2. *And be it further enacted,* That the probate courts of the territory of Montana, in their respective counties, in addition to their probate jurisdiction, are hereby authorized to hear and determine civil causes wherein the damage or debt claimed does not exceed five hundred dollars, and such criminal cases arising under the laws of the territory as do not require the intervention of a grand jury: *Provided,* That they shall not have jurisdiction in any matter in controversy when the title or right to the peaceable possession of land may be in dispute or chancery, or divorce cases; *And provided further,* That in all cases an appeal may be taken from any order, judgment, or decree of said probate court to the district court.

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SEC. 3. *And be it further enacted,* That the chief justice and associate justices of said territory and the territory of Idaho shall each receive an annual salary of thirty-five hundred dollars.

SEC. 4. *And be it further enacted,* That the judges of the supreme court of said territory, or a majority of them, shall, when assembled at the seat of government of said territory, define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and shall also fix and appoint the times and places for holding the courts in the several counties or sub-divisions in each of said judicial districts, and alter the times and places of holding the courts as to them shall seem proper and convenient, but not less than two terms shall be held at each place of holding court each year.

SEC. 5. *And be it further enacted,* That for the purpose of reviving the legislative functions of the territory of Montana which have been adjudged therein to have lapsed, the governor of said territory be, and he is hereby, authorized, on or before the first day of July, eighteen hundred and sixty-seven, to divide said territory into legislative districts for the election of members of the council and house of representatives, and to apportion among said districts the number of members of the legislative assembly provided for in the organic act of said territory; and the election of said members of the legislative assembly shall be held at such time and shall be conducted in the manner prescribed by the legislative assembly of said territory at the session thereof begun and holden at the city of Bannock, in eighteen hundred and sixty-four and eighteen hundred and sixty-five, and the qualifications of voters shall be the same as that prescribed by said organic act, saving and excepting the distinction therein made on account of race or color; and the legislative assembly so elected shall convene at the time prescribed by said legislative assembly at the session last aforesaid. The apportionment provided for in this section shall be based upon such an enumeration of the qualified electors of the said several legislative districts as shall appear from the election returns in the office of the secretary of said territory, and from such other sources of information as shall enable the governor, without taking a new census, to make an apportionment which shall fairly represent the people of the several districts in both houses of the legislative

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assembly; but the legislature may at any time change the legislative districts of the territory as fixed by the governor.

SEC. 6. *And be it further enacted*, That all acts passed at the two sessions of the so-called legislative assembly of the territory of Montana held in eighteen hundred and sixty-six, are hereby disapproved and declared null and void, except such acts as the legislative assembly herein authorized to be elected shall, by special act in each case, re-enact: *Provided, however*, That in all the claims of vested rights thereunder, the party claiming the same shall not, by reason of anything in this section contained, be precluded from making and testing said claim in the courts of said territory; *And provided further*, That no legislation or pretended legislation in said territory since the adjournment of the first legislative assembly shall be deemed valid until the election of the legislative assembly herein provided for shall take place.

SEC. 7. *And be it further enacted*, That from and after the first day of April next, the salary of each of the judges of the several supreme courts in each of the organized territories (except Montana and Idaho) shall be two thousand five hundred dollars.

SEC. 8. *And be it further enacted*, That all acts and parts of acts inconsistent with this act are hereby repealed.

Approved March 2, 1867.

AN ACT regulating the compensation of the members and officers of the Legislative Assemblies of the several territories of the United States, and limiting the duration of the sessions of said assemblies.

Be it Enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

That the sessions of the legislative assemblies of the several territories of the United States shall be limited to forty days duration.

SEC. 2. That the members of each branch of said legislatures shall receive a compensation of six dollars per day during the sessions herein provided for, and they shall receive such mileage as is now provided by law: *Provided*, That that the president of the

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council and the speaker of the house of representatives shall each receive a compensation of ten dollars per day, and that the additional officers of each branch of said legislative assemblies shall consist of one chief clerk, who shall receive a compensation of eight dollars per day, and one assistant clerk, one enrolling clerk, one engrossing clerk, one sergeant-at-arms, one door-keeper, one messenger, and one watchman, who shall each receive a compensation of five dollars per day during the session.

SEC. 3. That from and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the governors of the several territories of the United States shall be three thousand five hundred dollars, and the salaries of the secretaries of said territories shall be two thousand five hundred dollars each.

SEC. 4. The provisions of this act shall not apply to the District of Columbia: *Provided*, That no law of any territorial legislature shall be made or enforced by which any officer of a territory herein provided for, or the officers or members of any territorial legislature, shall be paid any compensation other than that provided by the laws of the United States.

Approved January 23, 1873.

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LAWS OF MONTANA.

ADMINISTRATORS AND EXECUTORS.

AN ACT to repeal an act entitled "An Act in relation to administrators and executors," approved May 6th, 1873.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That an act entitled "An Act in relation to administrators and executors," approved May 6th, 1873, be, and the same is hereby, repealed. Act repealed.

Approved February 3d, 1877.

APPORTIONMENT.

AN ACT re-apportioning the members of the legislative assembly.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the legislative assembly of the territory shall consist of thirteen members of the council and twenty-six members of the house of representatives. Number of members of legislature.

SEC. 2. The members of the council shall be apportioned to the several counties of the territory as follows: To the county of Lewis and Clarke, two members; to the county of Madison, two members; to the county of Deer Lodge, three members; to the county of Gallatin, one member; to the county of Jefferson, one member; to the county of Beaverhead, one member; to the county Apportionment of the council.

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of Missoula, one member; to the county of Meagher, one member; to the counties of Lewis and Clarke and Choteau, jointly, one member.

Apportionment of the house.

The members of the house of representatives shall be apportioned to the several counties as follows: To the county of Lewis and Clarke, six members; to the county of Madison, four members; to the county of Deer Lodge, six members; to the county of Gallatin, two members; to the county of Jefferson, two members; to the county of Beaverhead, one member; to the county of Missoula, two members; to the county of Meagher, two members; to the county of Choteau, one member.

SEC. 3. That an act of the legislative assembly entitled "A Bill for an act apportioning the members of the legislative assembly, and prescribing the time of their election," be, and the same is hereby, repealed.

Act repealed.

Approved February 15th, 1877.

ARMS AND AMMUNITION.

AN ACT to provide for the care and custody of the arms and ammunition belonging to the territory of Montana, and for other purposes.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the following named arms, accoutrements, and ammunition, to-wit: Five hundred Springfield rifled muskets, five hundred screw-drivers, fifty spring vises, one hundred tumbler punches, five hundred gun slings, five hundred waist belts, five hundred waist belt plates, twenty-five thousand musket ball cartridges, are, and are hereby declared to be the property of the territory of Montana, and the said territory assumes all responsibility regarding the care and custody of the said arms and ammunition, and all obligations to the United States on account of the same.

Arms and ammunition declared property of the territory.

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SEC. 2. That for the more fully carrying out the provisions of this act, the governor of this territory shall take charge of the hereinbefore mentioned arms and ammunition, and shall give such orders as he may think proper, or as shall be provided for by law, regarding their care and distribution.

Governor to have charge of same.

SEC. 3. The governor shall apportion the beforementioned arms and ammunition belonging to the territory among the several counties, in such manner as he shall think best: *Provided,* That when possible, a sufficient number shall be given to any county to completely arm and equip any militia companies that may be organized in such county. Such arms and ammunition shall be delivered by the governor to the sheriff of the county, who shall be responsible, on his official bond, for the care and safe keeping of such arms and ammunition, and for the delivery thereof in accordance with orders that he may receive from the governor: *Provided, further,* That the governor shall have the right, and it is hereby made his duty, on application being made, to sell to any citizen of this territory such arms and ammunition as he may think proper, at prices as fixed by the United States authorities—all proceeds from such sales to be paid into the territorial treasury. The parties purchasing such arms and ammunition shall be entitled to receive a certified invoice of the property from the governor or other officer delivering the property to him, and such certified invoice shall be *prima facie* evidence of the ownership of such property, and such party shall thereafter be exempt from the fines and penalties hereafter provided for in this act.

Same may be apportioned among the several counties and issued to militia companies.

May be sold to citizens at prices fixed by United States.

SEC. 4. Whenever a company is organized in any county as hereinbefore provided, the sheriff of such county shall issue to such company such arms, accoutrements, and ammunition as he may be directed to issue by the governor, taking therefor a receipt signed by the duly elected officers of such company, and a bond conditioned for the careful keeping and safe return of such arms and

Sheriff shall issue to company.

Officers of company to receipt for.

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accoutrements, or the payment of such sums as the same may be worth, in case of their loss or injury.

When issued to militia not to be sold, bartered, or loaned.

SEC. 5. The arms, accoutrements, or ammunition, issued to any officer or militiaman shall not be sold, bartered, exchanged, pledged, loaned, or given away, and no person not a member of an organized militia company or duly authorized officer, except as hereinbefore or may be hereinafter provided, who has possession of any such arms, accoutrements, or ammunition, so furnished, shall have any right, title, or interest therein, but the same may be seized wherever found by any officer, civil or military, and turned over to the sheriff of the county where such arms belong. Every person who shall violate the provisions of this section by selling, bartering, exchanging, loaning, pledging, or giving away, any such arms, accoutrements, or ammunition, and any person who shall, in any such sale, exchange, barter, pledge, loan, or gift, receive any such arms, accoutrements, or ammunition, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than twenty nor more than one hundred dollars, and shall be imprisoned in the county jail until such fine is paid. The possession of such arms, accoutrements, or ammunition, shall be *prima facie* evidence of such sale, barter, exchange, pledge, loan, or gift.

Penalty for violating this section.

When sheriff may issue to other persons.

SEC. 6. The governor may, whenever in his judgment it may become necessary, issue to or order issued by the sheriff of any county that may have the same in charge, such arms and ammunition as may be considered necessary to persons not members of any organized militia company, but such persons shall conform to the provisions of section 5 of this act and be subject to all fines and penalties therein prescribed.

Payment of expenses for keeping.

SEC. 7. That such sums of money as may now be due or that may hereafter become due for storage of arms and ammunition before their issue as herein prescribed, and such further sums, for such expenses, as may be

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necessarily incurred, shall be paid by the territory, and the territorial auditor is hereby authorized and instructed to draw his warrant on the territorial treasurer for such amount as may be certified to him by the governor as being due.

Approved February 16th, 1877.

ASSESSORS—ELECTION OF.

AN ACT providing for the election of county assessors.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. There shall be elected in each of the counties of this territory, at the next general election, and biennially thereafter, one assessor, who shall hold his office for the term of two years, and until his succesor is elected and qualified: *Provided,* That all assessors elected at the first general election after the passage of this act shall not take office until after the expiration of the term of the present incumbent in their respective counties.

One assessor for each county to be elected.

When such assessors to take office.

SEC. 2. Each county assessor shall, before entering upon the duties of his office, give a bond in a sum not less than two thousand dollars, or more, if the county commissioners so elect, with two or more sufficient sureties, conditioned for the faithful performance of his duties according to law, and to the satisfaction of the county commissioners, and shall take and subscribe an oath of office, which shall be endorsed on such bond; the bond must be approved by the commissioners, and shall be deposited with the county clerk. Said assessor shall give the bond and take the oath of office herein required on or before the first Monday in December after his election, and if the county clerk receives no notice of the qualification of such assessor on or before the said first Monday in December after the election, the office shall

Bond of assessor.

Oath of office.

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be declared vacant; or if there be a failure to elect by the people, or if there shall be, at any time, or from any cause, a vacancy in the office of assessor, or if said assessor, having qualified, shall fail to proceed to the discharge of the duties of his office before the first day of February in each year, the county commissioners shall forthwith appoint one suitable person, a resident of the county, to discharge the duties of county assessor, who shall thereupon take the necessary oath of office, give the same bond, perform the same duties, be entitled to the same fees, and subject to the same liabilities as in case of assessors elected by the people.

County commissioners may fill vacancies.

Not eligible for re-election.

SEC. 3. No person who shall have served one term of two years as assessor in any county shall be eligible to the next succeeding term: *Provided*, That the provisions of this act shall not apply to the election of assessor, or his eligibility to such office, in those counties wherein it is provided by law that the sheriff shall be, by virtue of his office, *ex-officio* assessor.

Ineligibility does not apply where sheriff is *ex-officio* assessor.

Repealing clause.

SEC. 4. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 16th, 1877.

BRANDS AND MARKS.

AN ACT to amend "An Act in relation to brands and marks," approved January 10, 1872. (Codified Statutes, page 563.)

Be it enacted by the Legislative Assembly of the Territory of Montana:

That sections 1 and 5 of the above entitled act be amended so as to read as follows:

Territorial treasurer made general recorder of marks and brands.

SECTION 1. That a general office for recording brands, or marks and brands, shall be kept at the seat of government, and the duties are hereby devolved on the territorial treasurer, without further compensation than is now provided by law for such treasurer: "Section 5. The

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general recorder of brands and marks shall annually have published, as an appendix to his report as territorial treasurer, a list of all brands, or marks and brands, which have not been previously published, and cause to be printed, at the expense of the territory, a sufficient number of copies in pamphlet form to furnish each county clerk with twenty-five copies thereof, for free distribution to those engaged in stock-growing. The general recorder may charge and receive, from each person applying for a brand, or mark and brand, a fee of one dollar for each brand, or mark and brand, so recorded, and all fees received by him shall be paid into the territorial treasury, to the credit of the general fund. The clerk of the supreme court shall, immediately after the approval of this act, deliver to the territorial treasurer all books and papers belonging to said office of general recorder of brands and marks.

Duties of recorder.

Fees for recording.

SEC. 2. That sections 1 and 5 are hereby repealed.

SEC. 3. That the territorial treasurer shall keep the books of brands and marks in alphabetical order.

Approved February 8th, 1877.

CENTENNIAL EXHIBITION.

AN ACT with reference to the exhibit of Montana at the national exhibition.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the exhibit of the territory of Montana, with the cases in which the same are contained, which are now in the possession of the Smithsonian Institute, and which were exhibited by the territory at the national exhibition at Philadelphia in the year 1876, be, and the same are hereby, donated to the United States, to be by them placed on exhibition at the said Smithsonian Institute, or in such other place as congress shall direct.

Donation to the Smithsonian Institute by the territory of Montana.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 3d, 1877.

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CODE OF CIVIL PROCEDURE.

AN ACT to provide a code of civil procedure in the territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

TITLE I. — Of the Form of Civil Actions.

CHAPTER I.

One form of civil action.

SECTION 1. There shall be in this territory but one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs, which shall be the same at law and in equity.

Of parties.

SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Trial of facts not in issue.

SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

TITLE II.—Of the Parties to Civil Actions.

Real party in interest to sue

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this act.

Action by assignee.

SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration before due.

Suit by executor, administrator, or trustee.

SEC. 6. An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons

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for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

SEC. 7. When a married woman is a party her husband must join with her, except—

Of suits where a married woman is a party

First. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.

Second. When the action is between herself and husband, she may sue or be sued alone.

Third. When she is living separate and apart from her husband, she may sue or be sued alone.

Right of wife to defend suit

SEC. 8. If a husband and wife be sued together, the wife may defend for her own right; and if the husband neglect to defend, she may defend for his right also.

Infant to appear by guardian when party to suit.

SEC. 9. When an infant is a party he shall appear by guardian, who may be appointed by the court in which the action was prosecuted, or by a judge thereof, or a probate judge.

SEC. 10. The guardian shall be appointed as follows:

Appointment of guardian for infant when a party.

First. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under that age upon the application of a relative or friend of the infant.

Second. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

Unmarried female may sue for her seduction.

SEC. 11. An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

Suit by parent or guardian for seduction of daughter or ward.

SEC. 12. A father, or, in case of his death or desertion, the mother, may prosecute, as plaintiff, for the seduction of the daughter, and the guardian for the

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seduction of the ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

Action for injury to child.

SEC. 13. A father, or, in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

Of the action for causing death to one not a minor.

SEC. 14. Where the death of a person not being a minor is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death, or if such person be employed by another person, who is responsible for his action, then also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case may be just.

Who may be joined as plaintiffs.

SEC. 15. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this act.

Who may be joined as defendants.

SEC. 16. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. And in an action to determine the title or right of possession to real property which, at the time of the commencement of the action, is in the possession of a tenant, the landlord may be joined as a party defendant.

Of actions for the possession of real property.

SEC. 17. In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may join as defendants, and if the judgment be for the plaintiff, he may have a writ for the possession of the premises as against the defendants in action against whom the judgment has passed.

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SEC. 18. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, coparceners, or in severalty, may unite in action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

Who may unite in an action to determine title to real estate.

SEC. 19. Of the parties to the action, those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

Joinder of parties plaintiffs or defendants.

SEC. 20. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action at the option of the plaintiff.

Joinder of parties liable in severalty.

SEC. 21. All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

Rights of parties jointly and severally.

SEC. 22. An action or proceeding does not abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, marriage, or other disability of a party, the court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action or proceeding may be continued in the name of the original

Abatement of actions.

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party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

Substitution of parties.

SEC. 23. A defendant against whom an action is pending upon a contract, or for specific, real, or personal property, may at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may, in its discretion, make the order.

Substitution by defendant of another defendant.

SEC. 24. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter of litigation in the success of either of the parties, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court, and served upon the parties to the action or proceedings who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

Person having an interest in suit may intervene.

How intervention may be had.

SEC. 25. Where two or more persons associated in the same business transact such business under a common name, whether it comprise the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates in the

Of judgments against a copartnership or association under a common name where one or more is served.

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same manner as if all had been named defendants, and had been sued upon their joint liability.

Powers of courts as to controversy between parties.

SEC. 26. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

Right of person not a party to interplead.

SEC. 27. When, in a civil action, a person not a party thereto, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in, and upon due service upon the adverse party of his complaint, or answer, the same proceedings shall be had as if he had been an original party to the action.

TITLE III.

CHAPTER I.—*Of the Time of Commencing Actions.*

Right to commence civil actions limited in this title.

SEC. 28. Civil actions can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

CHAPTER II.

Limitation for the recovery of real property.

SEC. 29. No action for the recovery of real property or for the recovery of the possession thereof, can be maintained unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the property in question within five years before the commencement of the action.

Limitation for recovery of an interest in real property.

SEC. 30. No cause of action or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the

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premises in question within five years before the commencement of the act in respect to which such action is prosecuted or defense made.

When entry upon real estate deemed sufficient.

SEC. 31. No entry upon real estate is deemed sufficient or valid, as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the right to make it descended or accrued.

Presumption, when legal title established.

SEC. 32. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title for five years before the commencement of the action.

As to adverse possession founded on a written instrument, decree, or judgment.

SEC. 33. When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there had been a continued occupation and possession of the property included in such instrument, decree or, judgment, or of some part of the property under such claim, for five years, the property so included is deemed to have been held adversely, except that, when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

What constitutes adverse possession when title founded on a written instrument, judgment, or decree.

SEC. 34. For the purpose of constituting adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

First. Where it has been usually cultivated or improved.

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Second. Where it has been protected by a substantial enclosure.

Third. Where, although not enclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant.

Fourth. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

As to adverse possession by occupancy only.

SEC. 35. Where it appears that there has been an actual continued occupation of land, under a claim of title exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

What constitutes adverse possession when title not founded on a written instrument, decree, or judgment.

SEC. 36. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

First. Where it has been protected by a substantial enclosure.

Second. Where it has been usually cultivated or improved.

Extent that possession of tenant is deemed possession of the landlord as between tenant and landlord.

SEC. 37. When the relation of landlord and tenant has existed between any persons the possession of the tenant is deemed the possession of the landlord until the the expiration of five years from the termination of the tenancy, or where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord; but such presumptions cannot be made after the periods herein limited.

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Right of possession not impaired by death of party in possession.

SEC. 38. The right of a person to the possession of real property is not impaired or affected by a descent cast in consequence of the death of a person in possession of such property.

Time during which certain disabilities continue not to be counted as portion of limitation.

SEC. 39. If a person entitled to commence an action for the recovery of real property, or for the recovery of possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, be at the time such title descends or accrues, either, first, within the age of majority; or, second, insane; or, third, imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than for life; or, fourth, a married woman, and her husband be a necessary party with her in commencing such action or making such entry or defense — the time during which such disability continues is not deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense; but such action may be commenced, or entry or defense made, within the period of five years after such disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period.

Limitation as to the right of recovery of mining claims.

SEC. 40. No action for the recovery of mining claims (lode claims excepted), or for the recovery of possession thereof, shall be maintained, unless it appear that the plaintiff or his assigns was seized or possessed of such mining claims within one year before the commencement of such action.

CHAPTER III.— *Of the Time of Commencing Actions Other than for the Recovery of Real Property.*

Limitation in an action on a decree or judgment.

SEC. 41. Actions other than those for the recovery of real property, as follows: 1, an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, shall be com-

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menced within six years; 2, an action upon any contract, obligation, or liability, founded upon an instrument in writing, shall be commenced within six years.

Upon a written instrument.

SEC. 42. 1, an action for waste or trespass upon real property; 2, an action upon a liability created by a statute, other than a penalty or forfeiture; 3, an action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property; 4, an action for relief on the ground of fraud or mistake (the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting fraud or mistake)—shall be commenced within two years.

Limitation in an action for waste or trespass on real property.

For taking or injuring personal property.

On the ground of fraud or mistake.

SEC. 43. An action against a sheriff, coroner, or constable, upon the liability incurred by the doing of an act in official capacity and in virtue of his office, or by the omission of an official duty, shall be commenced within two years.

Limitation in an action against a sheriff, coroner, or constable.

SEC. 44. 1, an action upon an account, or other contract, obligation, or liability, not founded upon an instrument of writing; 2, an action for libel, assault, or assault and battery, or false imprisonment; 3, an action upon an account for goods, wares, or merchandise sold and delivered, and upon any express or implied promise not above enumerated—shall be commenced within two years.

Limitation in an action upon contract, etc., not founded upon a written instrument.

Limitation for libel, assault, false imprisonment, &c.

In an action for goods sold and delivered

SEC. 45. 1, an action upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the territory, except where the statute imposing it prescribes a different limitation; 2, an action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process—shall be commenced within one year.

Limitation in an action upon a statute for a penalty or forfeiture.

Against an officer for escape of prisoner.

SEC. 46. There shall be no limitation upon the right to maintain an action for the recovery of money or other property deposited with any bank, banker, trust company, or savings and loan society.

No limitation in an action against a bank, &c., for money deposited.

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Limitation in other cases.

SEC. 47. An action for relief not hereinbefore provided for must be commenced within three years after the cause of action shall have accrued.

Limitation in an action upon open and current accounts.

SEC. 48. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

Limitation applies to the territory.

SEC. 49. The limitations prescribed in this act shall apply to actions brought in the name of the territory, or for the benefit of the territory, in the same manner as to actions brought by private parties.

Limitation not to apply to party out of territory.

SEC. 50. If when the cause of action shall accrue against a person when he is out of the territory, the action may be commenced within the time herein limited, after his return to the territory; and if after the cause of action shall have accrued he depart from this territory, the time of his absence shall not be a part of the time limited for the commencement of the action.

Limitation in case judgment is reversed.

SEC. 51. If the action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be rendered on error or appeal, the plaintiff, or if he die and the cause of action survive, his heirs or representatives, may commence a new action within one year after the reversal.

Injunction or statute stops limitation.

SEC. 52. When the commencement of an action is stayed by injunction, or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Effect of new promise on limitation.

SEC. 53. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this act, unless the same is contained in some writing signed by the party to be charged thereby; but this act shall not alter the effect of any payment of principal or interest.

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SEC. 54. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment shall be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Effect of payment made on contract, &c.

SEC. 55. When the cause of action shall have arisen in any other state or territory of the United States, or in a foreign country, and by the laws thereof an action cannot be maintained against a person by reason of the lapse of time, no action thereon shall be commenced against him in this territory.

Limitation in case where cause of action shall have arisen out of the territory.

TITLE IV.

CHAPTER I.—*Of the Place of Trial of Civil Actions.*

SEC. 56. Except when otherwise provided, actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this act:

Place of trial of civil actions.

First. For the recovery of real property, or of an interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

Second. For the partition of real property.

Third. For the foreclosure of a mortgage of real property: *Provided,* That where such real property is situated partly in one county and partly in another, the plaintiff may select either of said counties, and the county so selected shall be the proper county for the trial of any or all of such actions as are mentioned in this section.

SEC. 57. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial:

Actions that are tried in county where cause arose.

First. For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for

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an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offense was committed.

Second. Against a public officer or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, does anything touching the duties of such officer.

Where actions against counties are to be tried.

SEC. 58. Actions against counties may be commenced and tried in any county in the judicial district in which such county is situated, unless such actions are between counties, in which case they may be commenced and tried in any county not a party thereto.

Other actions, where tried.

SEC. 59. In all other cases, the action shall be tried in the county in which the defendants, or any of them, may reside at the commencement of the action, or where the plaintiff resides, and the defendants, or any of them, may be found; or if none of the defendants reside in the territory, or, if residing in the territory, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if any defendant or defendants may be about to depart from the territory, such action may be tried in any county where either of the parties may reside, or service be had. Actions upon contracts may be tried in the county in which the contract was to be performed; and actions for torts, in the county where the tort was committed; subject, however, to the power of the court to change the place of trial as provided in this act.

In case county attached for judicial purposes.

SEC. 60. When a county shall be attached to another county for judicial purposes, actions arising or triable therein, of which a district court shall have exclusive jurisdiction, shall be commenced and tried in the county to which such county may be so attached.

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SEC. 61. If the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and answers or demurs, files an affidavit of merits, and demands, in writing, that the trial be had in the proper county.

Suit not to abate if brought in the wrong county, but change may be had on filing affidavit.

SEC. 62. The court may, on good cause shown, change the place of trial in the following cases:

First. When the county designated in the complaint is not the proper county.

Second. When there is reason to believe that an impartial trial cannot be had therein.

Third. When the convenience of witnesses and the ends of justice would be promoted by the change.

Causes for change of venue.

Fourth. When, from any cause, the judge is disqualified from acting in the action: *Provided*, The court shall not change the place of trial for disqualification of the district judge, in any case where the judge of another district court will appear and try the action.

SEC. 63. If an action or proceeding is commenced or pending in a court, and the judge or justice thereof is disqualified from acting as such, or if, for any cause, the court orders the place of trial to be changed, it must be transferred for trial to a court the parties may agree upon by stipulation in writing, or made in open court, and entered in the minutes; or if they do not so agree, then to the nearest court where the like objection or cause for making the order does not exist, as follows:

Change of venue in case the court is disqualified to act.

First. If in the district court, to another district court.

Second. If in the probate court, to some other probate court.

Third. If in a justice's court, to another justice's court in the same county.

SEC. 64. When an order is made, transferring an action or proceeding for trial, the clerk of the court or justice of the peace must transmit the pleading and papers therein to the clerk or justice of the court to

All papers and pleadings to be transferred in case change is granted.

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which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

Jurisdiction of the court to which case is transferred.

SEC. 65. When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any court of a county other than the county in which the real estate, or some portion of it, is situated, the clerk of such court must, after final judgment thereon, certify, under his seal of office, and transmit to the corresponding court of the county in which the real estate affected by the action is situated, a copy of the judgment. The clerk receiving such copy must file, docket, and record the judgment in the records of the court, briefly designating it as a judgment transferred from ——— court (naming the proper court).

Proceeding where judgment obtained affecting real estate lying in another county.

TITLE V.—OF THE MANNER OF COMMENCING CIVIL ACTIONS.

SEC. 66. Civil actions in the courts of this territory are commenced by filing a complaint.

Commencement of civil actions.

SEC. 67. The clerk must endorse on the complaint the day, month, and year that it is filed, and at any time within one year thereafter the plaintiff may have a summons issued, and if the action be brought against two or more defendants who reside in different counties, may have a summons issued for each of such counties at the same time. But at any time within the year after the complaint is filed, the defendant may, in writing or by appearing and answering or demurring, waive the issuing of summons, or if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year at any time before trial.

Endorsements of complaint.

Issuance of summons to different counties.

SEC. 68. The summons must be directed to the defendant, signed by the clerk, and issued under the seal of the court, and must contain:

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First. The names of the parties to the action, the court in which it is brought, and the county in which the complaint is filed.

Second. The cause and general nature of the action.

Third. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the county in which the action is brought; within twenty days, if served out of the county, but in the district in which the action is brought; and within forty days, if served elsewhere.

What the summons must contain.

Fourth. In an action arising on contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded in the complaint (stating it).

Fifth. In other actions, a notice that unless defendant so appears and answers, the plaintiff will apply to the court for the relief demanded in the complaint.

The name of the plaintiff's attorney must be endorsed on the summons.

SEC. 69. If the summons is returned without being served on any or all of the defendants, or if it has been lost, the clerk, upon the demand of the plaintiff, may issue an *alias* summons, in the same form as the original.

When an *alias* summons to issue.

SEC. 70. In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties and the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

Notice of the pendency of suit may be filed if action affect real property.

When constructive notice deemed to have been given.

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Who may serve the summons.

SEC. 71. The summons may be served by the sheriff of the county where the defendant is found, or by any other person over the age of eighteen, not a party to the action. When the summons is served by the sheriff it must be returned, with his certificate of its service, and

Return of the summons.

of the service of any copy of the complaint where such copy is served, to the office of the clerk from which it issued. When it is served by any other person it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

SEC. 72. The summons must be served by delivering a copy thereof, as follows:

First. If the suit is against a corporation formed under the laws of this territory, to the president or other head of the corporation, secretary, cashier, or managing agent thereof.

Second. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business and having a managing or business agent, cashier, or secretary, within this territory, to such agent, cashier, or secretary.

Manner of the service of the summons.

Third. If against a minor, under the age of fourteen years, residing within this territory, to such minor personally, and also to his father, mother, or guardian; or if there be none within this territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

Fourth. If against a person residing within this territory, who has been judicially declared of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such person and also to his guardian.

Fifth. If against a county, city, or town, to the president of the board of supervisors, president of the council or trustees, or other head of the legislative department thereof.

Sixth. In all other cases, to the defendant personally.

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SEC. 73. Where the person on whom the service is to be made resides out of the territory, or has departed from the territory, or cannot after due diligence be found within the territory, or conceals himself to avoid the service of summons, or is a foreign corporation, having no managing or business agent, cashier, or secretary, within the territory, and the fact appears by affidavit to the satisfaction of the court or judge thereof, and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may make an order that the service be made by the publication of the summons.

Summons, how served on non-resident, or foreign corporation, or where defendant cannot be found.

SEC. 74. The order must direct the publication to be made in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable—at least once a week; but publication against a defendant residing out of the territory, or absent therefrom, must not be less than four weeks. In case of publication where the residence of a non-resident or absent defendant is known, the court or judge must direct a copy of the summons to be forthwith deposited in the post-office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the territory is equivalent to publication and deposit in the post-office; and in either case the service of the summons is complete at the expiration of the time prescribed by the order for publication.

Order for publication of summons.

Copy to be sent to non-resident if residence be known.

Personal service of copy of summons and complaint on non-resident equivalent to publication.

SEC. 75. When the action is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them, the plaintiff may proceed against the defendant served in the same manner as if they were the only defendants.

Rule where only one of joint or several defendants is served.

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SEC. 76. Proof of the service of summons must be as follows:

First. If served by the sheriff, his certificate thereof.

Second. If by any other person, his affidavit thereof; or,

What proof of service required.

Third. In case of publication, the affidavit of the printer, or his foreman or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons in the post-office, if the same has been deposited; or,

Fourth. The written admission of the defendant.

Return in case of personal service.

SEC. 77. In case of service otherwise than by publication, the certificate or affidavit must state the time and place of service.

When court deemed to have acquired jurisdiction.

SEC. 78. From the time of the service of the summons and of a copy of the complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication when service by publication is ordered, the court is deemed to have acquired jurisdiction of the parties, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons upon him.

TITLE VI.—OF THE PLEADINGS IN CIVIL ACTIONS.

CHAPTER I.

Definition of pleadings.

SEC. 79. The pleadings are the formal allegations by the parties of their respective claims and defenses for the judgment of the court.

Sufficiency of pleadings.

SEC. 80. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this act.

Pleadings on part of plaintiff.

SEC. 81. The only pleadings allowed on the part of the plaintiff are:

First. The complaint;

Second. The demurrer to the answer;

Third. The replication to defendant's answer.

Pleadings on part of defendant.

And on the part of the defendant:

First. The demurrer to the complaint;

Second. The answer.

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CHAPTER II.—*The Complaint.*

Complaint.

SEC. 82. The first pleading on the part of the plaintiff is the complaint.

SEC. 83. The complaint must contain:

First. The title of the action; the name of the court and county in which the action is brought, and the names of the parties to the action.

What complaint must contain.

Second. A statement of the facts constituting the cause of action, in ordinary and concise language.

Third. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

SEC. 84. The plaintiff may unite several causes of action in same complaint when they arise out of:

First. Contracts, express or implied.

Second. Claims to recover specific real property, with or without damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same, and for an injunction to stay waste or injury thereto.

Third. Claims to recover specific personal property, with or without damages, for the withholding thereof.

Causes of action that may be joined.

Fourth. Claims against a trustee by virtue of a contract, or by operation of law.

Fifth. Injuries to character.

Sixth. Injuries to person.

Seventh. Injuries to property; but the causes of action so united shall all belong to only one of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated: *Provided, however*, That an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to person.

CHAPTER III.

When defendant may demur.

SEC. 85. The defendant may demur to the complaint within the time required in summons to answer, when it appears upon the face thereof, either:

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First. That the court has no jurisdiction of the person of the defendant or the subject of the action; or,

Second. That the plaintiff has no legal capacity to sue; or,

Third. That there is another action pending between the same parties for the same cause; or,

Fourth. That there is a defect or misjoinder of parties, plaintiff or defendant; or,

Fifth. That several causes of action have been improperly united; or,

Sixth. That the complaint does not state facts sufficient to constitute a cause of action; or,

Seventh. That the complaint is ambiguous, unintelligible, or uncertain.

Demurrer must specify grounds of objection.

The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken; unless it do so, it may be disregarded.

Defendant may demur and answer.

The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue, or may demur and answer at the same time: *Provided*, That a demurrer and answer shall in no case be filed at the same time to the same cause of action; but demurrers must be disposed of before any other pleadings to the same cause of action shall be filed.

Amended complaint, how served.

If the complaint be amended, a copy of the amendments shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments shall be served upon every defendant to be affected thereby, or upon his attorney, if he has appeared by attorney. The defendant shall answer in such time as may be ordered by the court, and judgment by default may be entered upon failure to answer, as in other cases.

When objections taken by answer.

SEC. 86. When any of the matters enumerated in section 85 do not appear upon the face of the complaint the objection may be taken by answer. If no such objection be taken, either by demurrer or answer, the defendant

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shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitue a cause of action.

Objections, when deemed waived.

CHAPTER IV.—*The Answer.*

SEC. 87. The answer of the defendant shall contain:

First. A specific denial of the material allegations of the complaint controverted by the defendant.

Second. A statement of any new matter constituting a defense or counter claim.

Answer, what to contain.

If the complaint be verified, the denial of each allegation controverted must be specific, and be made positively or according to the information and belief of the defendant.

SEC. 88. The counter claim mentioned in the last section shall be one existing in favor of the defendant or plaintiff, and against a plaintiff or defendant, between whom a several judgment might be had in the action, arising out of one of the following causes of action:

First. A cause of action arising out of the transaction set forth in the complaint or answer as the foundation of the plaintiff's claim or defendant's defense, or connected with the subject of the action.

Counter claims.

Second. In an action arising upon contract, any other cause of action arising also upon contract, and existing at the commencement of the action.

SEC. 89. If the defendant omit to set up a counter claim in the cases mentioned in the first sub-division of the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

When defendant is barred if he fail to set up counter claim

When cross demands have existed between persons under such circumstances that if one had brought an action against the other a counter claim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other, but the two demands shall be deemed compensated so far as they equal each other.

Cross demands.

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Several defenses may be interposed.

The defendant may set forth, by answer, as many defenses and counter claims as he may have; they shall each be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer in a manner by which they may be intelligibly distinguished.

CHAPTER V.

Demurrer to answer.

SEC. 90. The plaintiff may, within the same length of time after service of the answer as the defendant is allowed to answer after service of summons, demur to the answer of the defendant, or to one or more of the several defenses or counter claims set up in the answer.

Causes for demurrer to answer.

SEC. 91. The demurrer may be taken upon one or more of the following grounds:

First. That several causes of counter claim have been improperly joined.

Second. That the answer does not state facts sufficient to constitute a defense or counter claim.

Third. That the answer is ambiguous, unintelligible, or uncertain.

When answer contains new matter plaintiff may reply.

SEC. 92. When the answer contains new matter the plaintiff may, within ten days from the date of filing such answer, reply thereto, and upon the overruling of a demurrer to an answer, the court may allow the plaintiff to file a reply upon payment of costs caused by such demurrer.

CHAPTER VI.

Pleadings subscribed.

SEC. 93. Every pleading must be subscribed by the party or his attorney.

SEC. 94. All complaints, answers, and replications shall be verified as provided in this section, except that when an admission of the truth of the allegation might subject the party to a prosecution for felony or misdemeanor, or when the action is by the district attorney, in behalf of the territory or county, the verification may be omitted. The affidavit of verification shall state that the facts stated in the pleading are true to the knowledge

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of the person making it, except as to those matters which are therein stated on his information and belief, and as to those matters, that he believes it to be true. Such verification shall be made by the party, or if there are several parties united in interest or pleading, by one at least of such parties acquainted with the facts, if such party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party, if the party is absent from the county where the attorney resides, or is from any other cause unable to verify the pleading, and in such case the verification shall state that the affiant is the agent or attorney of the party, and the reason why such verification is made by such agent or attorney, and that the facts stated in the pleading are true to the best knowledge, information, and belief of such agent or attorney.

Verification of pleadings.

When a corporation is a party, the verification may be made by any officer thereof, and shall state what officer he is, and that the facts stated in the pleading are true to the best knowledge, information, and belief of such officer.

SEC. 95. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same shall be verified.

When the genuineness of a written instrument is admitted.

SEC. 96. When the defense to an action is founded on a written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file with the clerk, within ten days after the filing of the answer, an affidavit denying the same, and serve a copy thereof on the defendant.

Denial of the execution of a written instrument in action.

SEC. 97. But the execution of the instrument mentioned in the two preceding sections is not deemed admitted by a failure to deny the same under oath, if the party desiring to controvert the same is, upon demand, refused an inspection of the original.

Right of party to inspect written instrument in action.

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CHAPTER VII.

Construction of pleadings.

SEC. 98. In the construction of a pleading for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Sham answers and redundant matter may be stricken out.

SEC. 99. Sham and irrelevant answers, and irrelevant and redundant matter, inserted in a pleading may be stricken out upon such terms as the court may in its discretion impose.

Items of account—demand for.

It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party, within five days after a demand therefor in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or judge thereof, or probate judge, may order a further account when the one delivered is too general, or is defective in any particular.

Description of real property in complaint.

SEC. 100. In action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer upon execution to identify it.

Judgments—how to be pleaded.

SEC. 101. In pleading a judgment or other determination of a court, or officer of especial jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.

Conditions precedent—how pleaded.

SEC. 102. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish, on the trial, the facts showing such performance.

Statute of limitations—how pleaded.

SEC. 103. In pleading the statute of limitations, it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is

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barred by the provisions of section —— (giving the number of the section, and sub-division thereof, if it is so divided, relied upon) of the code of civil procedure; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.

Proof when statute of limitation pleaded.

SEC. 104. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Private statutes—how pleaded.

SEC. 105. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish, on the trial, that it was so published or spoken.

Libel and slander, how stated in complaint.

SEC. 106. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Answer in libel and slander.

SEC. 107. Every material allegation of the complaint or answer not controverted by the answer, or replication thereto, shall, for the purposes of the action, be taken as true. The statement in the replication of matter in avoidance shall, on the trial, be deemed controverted by the adverse party.

Allegations not denied deemed true.

SEC. 108. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

Material allegation.

SEC. 109. The plaintiff and defendant respectively may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case, occurring after the former complaint or answer.

Supplemental complaint or answer.

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CHAPTER VIII.

Of variance between the pleadings and proof.

SEC. 110. No variance between the allegation in a pleading and the proofs is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Where it appears that a party has been so misled, the court may order the pleading to be amended, upon such terms as may be just.

Where variance immaterial, amendment without costs.

SEC. 111. Where the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

What not deemed a variance within the last two sections.

SEC. 112. Where, however, the allegation of the claim, or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proofs.

When pleadings amended as a matter of course.

SEC. 113. Any pleading may be amended once by the party of course, and without cost, at any time before answer or demurrer filed, and after the demurrer and before the trial of the issue of law thereon, by filing the same as amended, and serving a copy on the adverse party, who may have ten days thereafter in which to answer or demur to the amended pleading.

Amendment on terms.

SEC. 114. The court may, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for an answer, replication, or demurrer, or demurrer to an answer filed. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in any other particulars; and may, upon like terms, allow an answer to be made after the time limited by this act; and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal

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representatives from a judgment, order, or other proceeding, taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when, for any cause satisfactory to the court, or the judge at chambers, the party aggrieved has been unable to apply for the relief sought, during the term at which such judgment, order, or proceeding complained of was taken, the court, or judge at chambers, in vacation, may grant the relief, upon application made within a reasonable time, not exceeding five months after the adjournment of the term. When, from any cause, the summons and copy of the complaint in an action have not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

SEC. 115. When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond, is sued for taking the same, the officer or sureties may, in their answer, set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made; or that the value in the affidavit stated was inserted by mistake; and the court shall disregard the value, as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.

When the affidavit for recovery of personal property may be disregarded.

SEC. 116. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated, in any pleading or proceeding, by any name; and when his true name is discovered, the pleadings or proceedings may be amended accordingly.

When defendant may be sued by a fictitious name.

SEC. 117. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the parties; and no judgment shall be reversed or affected by reason of such error or defect.

When court to disregard defects in pleadings.

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TITLE VII.—Of the Provisional Remedies in Civil Actions.

Chapter I.—*Arrest and Bail.*

Arrest in civil action.

Sec. 118. No person shall be arrested in a civil action, except as prescribed in this act.

Sec. 119. The defendant may be arrested, as hereinafter prescribed, in the following cases arising after the passage of this act:

First. In an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors; or when the action is for wilful injury to person, to character, or to property, knowing the property to belong to another.

Second. In an action for a fine or penalty; or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office, or in a professional employment; or for a wilful violation of duty.

Cases in which defendant may be arrested.

Third. In an action to recover possession of personal property, unjustly obtained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found, or taken by the sheriff.

Fourth. When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought; or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought.

Fifth. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Order for arrest.

Sec. 120. An order for the arrest of the defendant shall be obtained from a judge of the court in which the action is brought, or from a probate judge.

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SEC. 121. The order shall be made whenever it shall appear to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section 119. Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with at least two sufficient sureties, to the effect that, if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an order of arrest, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the wrongful suing out of the order of arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars.

Order, when made.

Plaintiff to give security.

SEC. 122. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder, or freeholder, within the territory, and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court.

Affidavit of sureties.

SEC. 123. The order may be made to accompany the summons, or at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him, and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

Order, when made and form of.

SEC. 124. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

Order and affidavit delivered to sheriff, also to defendant.

SEC. 125. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law: *Provided*, That the sheriff shall not be bound to keep such person under arrest more than

Duty of sheriff in making arrest.

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twenty-four hours, unless the plaintiff advance each day the expense of keeping such person; which expense shall be taxed as costs in the action, and in no case shall be a charge against the county.

How defendant discharged before execution.

SEC. 126. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this chapter.

Bail—how given.

SEC. 127. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant shall at all times render himself amenable to the process of the court during the pendancy of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Bail may surrender defendant.

SEC. 128. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested.

Manner of surrendering the defendant.

SEC. 129. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him, or, by a written authority endorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff, or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail shall be exonerated: *Provided*, Such arrest, delivery, or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter.

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SEC. 130. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

Action may be against bail.

SEC. 131. The bail shall also be exonerated by the death of the defendant, or his imprisonment in a territorial prison; or by his legal discharge from the obligation to render himself amenable to the process.

Bail—how exonerated.

SEC. 132. Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession, until filed as herein provided. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

Return of order with undertaking by sheriff.

Plaintiff may object to bail.

SEC. 133. Within five days after receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifiying the place of residence and occupation of the latter), before a judge of the court, or clerk thereof, or probate judge, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

Notice of justification and new undertaking.

SEC. 134. The qualifications of bail shall be as follows:

First. Each of them shall be a resident and householder, or freeholder, within the county.

Second. Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification,

Qualifications of bail.

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may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

How bail to justify.

SEC. 135. For the purpose of justification, each of the bail shall attend before the judge or clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency in such manner as the judge or clerk, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the bail if required by the plaintiff.

Allowance of bail.

SEC. 136. If the judge or clerk shall find the bail sufficent, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

Deposit of money in place of bail.

SEC. 137. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

Money deposited paid into court.

SEC. 138. The sheriff shall, immediately after the deposit, pay the same into court, and take from the clerk receiving the same, two certificates of such payment, the one of which he shall deliver or transmit to the plaintiff or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

Substituting bail for deposit.

SEC. 139. If money be deposited as provided in the last two sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the

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clerk, the money deposited shall be refunded by such clerk to the defendant.

SEC. 140. Where money shall have been deposited, if it remain on deposit at the time of recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof; and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under the direction of the court, refund him the whole sum deposited and remaining unapplied.

Money deposited, how disposed of.

SEC. 141. If, after being arrested, the defendant escape or be rescued, the sheriff shall himself be liable as bail, but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

Liability of sheriff as bail.

SEC. 142. If a judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied in whole or in part, the same proceeding may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

Proceeding against sheriff under last section.

SEC. 143. A defendant arrested may, at any time before justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs in addition to those on which the order of arrest was made.

Motion to vacate order or reduce bail.

SEC. 144. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

When order vacated or bail reduced.

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Person in jail how discharged.

SEC. 145. Every person confined in jail on an execution issued on a judgment rendered in a civil action, shall be discharged therefrom upon the conditions hereinafter specified.

Application for discharge.

SEC. 146. Such person shall cause notice in writing to be given to the plaintiff, his agent or attorney, that at a certain time and place he will apply to the district or probate judge of the county in which such person may be confined, for the purpose of obtaining a discharge from his imprisonment.

Service of notice of application.

SEC. 147. Such notice shall be served upon the plaintiff, his agent or attorney, one day at least before the hearing of the application. If the plaintiff be not a resident of the county, and have no agent or attorney in the county, no such notice need be served.

Examination for discharge.

SEC. 148. At the time and place specified in the notice, such person shall be taken before such judge, who shall examine him under oath, concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and such judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or creditor.

Oath administered upon discharge.

SEC. 149. If, upon examination, the judge be satisfied that the prisoner is entitled to his discharge, such judge shall administer to him the following oath: "I, ——— ———, do solemnly swear (or affirm) that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors."

Order for discharge.

SEC. 150. After administering the oath, the judge shall issue an order that the prisoner be discharged from custody, if he be imprisoned for no other cause; and the officer upon receiving service of such order, shall discharge the prisoner forthwith, if he be imprisoned for no other cause.

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SEC. 151. If such judge should not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceedings shall thereupon be had.

Times in which prisoner can apply for discharge

SEC. 152. The prisoner, after being so discharged, shall be forever exempt from arrest and imprisonment for the same debt, but the judgment against him shall remain in full force against any estate, present or future, of the prisoner, not exempt from execution.

Effect of discharge.

SEC. 153. The plaintiff in the action may, at any time, order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action.

Plaintiff may order prisoner discharged.

CHAPTER II. — *Claim and Delivery of Personal Property.*

SEC. 154. The plaintiff, in an action to recover possession of personal property, may, at the time of issuing summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter.

Claim of the delivery of personal property.

SEC. 155. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

First. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof.

Second. That the property is wrongfully detained by the defendant.

The affidavit and its requisites.

Third. The alleged cause of the detention thereof according to his best knowledge, information, and belief.

Fourth. That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by the statute exempt from such seizure; and,

Fifth. The actual value of the property.

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Sheriff may be required to take possession of property.

SEC. 156. The plaintiff or his attorney may thereupon, by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant.

When sheriff to take property.

SEC. 157. Upon receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, without delay and with effect and for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody.

Further duty of sheriff.

He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the nearest post office, directed to the defendant.

Exception by defendant to sureties.

SEC. 158. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice, in like manner as upon bail on arrest; and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

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In case of judgment for return of personal property, same to be returned in condition as when taken.

SEC. 159. In all cases when a judgment shall be rendered in an action to recover the possession of personal property for the return thereof, or its value in case a return cannot be had, it shall be the duty of the party against whom such judgment shall be rendered to return the same in as good condition as the same was when possession thereof was taken by him.

If property injured while retained, action may be had.

SEC. 160. In case such property shall, while in the possession of the party against whom such judgment shall be rendered, or while the same shall be unlawfully detained from the party entitled to the possession thereof, be materially injured or lessened in value by use or otherwise, then a return or offer to return the same shall not be deemed a compliance with the undertaking given for its return, but an action may be maintained for the value thereof as assessed by the jury or court, and damages for its detention.

Property returned to sheriff to be advertised and sold.

SEC. 161. In case such action to recover possession of personal property shall be brought against any sheriff or other officer who may have levied upon and seized the same under authority of any attachment or other process, and judgment shall be rendered in favor of such officer for the return of the property, the party against whom such judgment shall be rendered may nevertheless make return of said property, notwithstanding the same may have been injured or lessened in value, and thereupon it shall be the duty of such officer to immediately advertise the same for sale as in cases of sales of personal property under execution, and apply the proceeds of the sale thereof, after paying the costs, towards the payment and satisfaction of any judgment that may have been rendered.

The undertaking not discharged under the preceding section.

SEC. 162. Such second taking of such property referred to in the preceding section shall not release or discharge the sureties on any undertaking given for the return of such property, but an action may be maintained on such undertaking and recovery thereon had, unless the property shall have been actually returned in accordance with the judgment rendered.

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Defendant may have property returned.

SEC. 163. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section 126.

Sureties of defendant to justify.

SEC. 164. The defendant's sureties, upon notice to the plaintiff of not less than two nor more than five days, shall justify before a judge or clerk, in the same manner as upon bail on arrest; and upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualification of sureties.

SEC. 165. The qualification of sureties and their justification shall be such as are prescribed by this act in respect to bail upon an order of arrest.

Duty of sheriff if property concealed.

SEC. 166. If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and if necessary, he may call to his aid the power of his county.

How sheriff to keep property.

SEC. 167. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping, the same.

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SEC. 168. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim by an undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless so made.

Claim of property by third person.

SEC. 169. The sheriff shall file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

Notice and affidavit to be filed.

CHAPTER III.—*Injunction.*

SEC. 170. An injunction is a writ or order requiring a person to refrain from a particular act. The order or writ may be granted by the court in which the action is brought, or by a judge thereof, and when made by a judge may be enforced as the order of the court.

Injunction defined.

SEC. 171. An injunction may be granted in the following cases:

First. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

Cases in which an injunction may be granted.

Second. When it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the plaintiff.

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Third. When it shall appear during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

When may be granted.

SEC. 172. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards, before judgment, upon affidavits. The complaint in the one case, and the affidavits in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint unless it be verified by the oath of the plaintiff, or some one in his behalf, that he, the person making the oath, has read the complaint, or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that as to those matters he believes it to be true. When granted on the complaint, a copy of the complaint and verification attached shall be served with the injunction; when granted upon affidavit, a copy of the affidavit shall be served with the injunction.

To be verified.

Granted on complaint, copies served.

When allowed after answer.

SEC. 173. An injunction shall not be allowed after the defendant has answered, unless upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge, granting or refusing the injunction.

Undertaking required on granting injunction.

SEC. 174. On granting an injunction, the court or judge must require, except the people of the territory are a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

Within five days after the filing of the undertaking

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required, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them.

Defendant may except to undertaking.

When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two nor more than five days, must justify before a judge or county clerk, in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved.

If sureties excepted to, they must justify.

Failure to justify, the injunction to be dissolved.

SEC. 175. If the court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place, why the injunction should not be granted, and the defendant may, in the meantime, be restrained.

Defendants may be heard before granting injunction.

SEC. 176. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or a judge thereof; nor shall it be granted without due notice of the application therefor to the proper officers or managing agent of the corporation, except when the people of this territory are a party to the proceedings.

Injunction to suspend business of corporation.

SEC. 177. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or upon affidavit on part of defendant, with or without the answer. If the application be made upon affidavits on part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the injunction was granted.

Motion to vacate or modify injunction.

SEC. 178. If, upon such application, it satisfactorily appear that there is not sufficient ground for the injunction, it shall be dissolved; or, if it satisfactorily appear that the extent of the injunction is too great, it shall be modified.

When shall be vacated or modified.

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CHAPTER IV.—*Attachments.*

SEC. 179. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant not exempt from execution attached, as security for the satisfaction of any judgment that may be recovered in said action, unless the defendant give good and sufficient security to secure the payment of said judgment: *Provided*, That no writ of attachment shall be issued until the plaintiff, his agent or attorney, shall file with the clerk an affidavit showing that the defendant is indebted to the plaintiff, upon a contract, express or implied, for the payment of money, gold dust, or other property, then due, which is not secured by a mortgage lien, or pledge upon real or personal property, or is so secured that the security has become insufficient by the act of the defendant, or by any means has become nugatory.

Attachment—when issued.

SEC. 180. Before issuing the writ the clerk shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the wrongful suing out of the attachment, not exceeding the sum specified in the undertaking. Said sureties may be required to justify before the clerk of the court to the effect that each, for himself, is worth the amount specified in the undertaking, over and above his debts and liabilities, and property by law exempt from execution in the territory of Montana: *Provided*, That when the amount claimed by the plaintiff shall be one thousand dollars, or any sum under one thousand dollars, the said undertaking shall be in a sum not less than double the amount claimed: *Provided, also*, When the amount claimed in the affidavit of the plaintiff equals or exceeds

Undertaking.

Sureties thereon.

Amount of the undertaking.

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the sum of three thousand dollars, the undertaking may be executed by two or more sureties, and they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount is equivalent to that of two sufficient sureties: *Provided, also,* That if such amount claimed by plaintiff, in the affidavit, equals or exceeds the sum of ten thousand dollars, an undertaking shall only be required in the sum of ten thousand dollars.

SEC. 181. Actions may be commenced, and writs of attachment issued, upon any debt for the payment of money, or specific property, before the same shall have become due, when it shall appear by the affidavit, in addition to what is required in section 137 of this act, first, that the defendant is leaving, or is about to leave, this territory, taking with him or her property, moneys, or other effects, which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or, second, that the defendant is disposing of his property, or is about to dispose of his property, subject to execution, for the purpose of defrauding his creditors: *Provided,* That any judgment obtained under the provisions of this section shall be with a rebatement of the interest from the time said judgment is rendered until the time at which said debt would have become due: *And provided, also,* That the defendant may, by a plea, put in issue the matter alleged in the affidavit herein required, and if the plaintiff fail to substantiate some one of the causes required to be alleged in said affidavit, the suit for debt or debts not due shall abate.

Attachment when debt not due.

SEC. 182. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint,

Writ of attachment.

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unless the defendant deposit the amount or give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case to take such undertaking. Several writs may be issued at the same time to the sheriffs of different counties.

SEC. 183. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this territory of such defendant not exempt from execution, may be attached, and, if judgment be recovered, be sold to satisfy the judgment and execution.

Property liable to attachment.

SEC. 184. The sheriff to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking mentioned in section 155 be not given, as follows:

First. Real property standing upon the records of the county in the name of the defendant, shall be attached by filing a copy of the writ, together with a description of the property attached, with the recorder of the county.

Second. Real property, or any interest therein, belonging to the defendant, any held by any other person, or standing upon the records of the county in the name of any other person (but belonging to the defendant), shall be attached by leaving such person or his agent a copy of the writ and a notice that such real property (giving a description thereof), and any interest therein belonging to the defendant, are attached, pursuant to such writ, and filing a copy of such writ and notice with the recorder of the county.

Writ—how executed.

Third. Personal property capable of manual delivery shall be attached by taking it into custody.

Fourth. Stock or shares, or any interest in stock or shares, of any corporation or company, shall be attached by leaving with the president, or other head of the same,

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or the secretary, or cashier of the same, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of defendant is attached in pursuance of such writ.

Fifth. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits and other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Record of property attached to be kept.

SEC. 185. It shall be the duty of the county recorder to file and safely keep such copy of the writ and description of the property, subject to the inspection of all persons; and such recorder shall receive a fee of twenty-five cents for such filing and safe keeping of said list, to be paid by the plaintiff in the action and taxed and allowed to him as other costs and disbursements in the action.

Garnishment.

SEC. 186. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ, and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

Liability of garnishee.

SEC. 187. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice as provided in the last section, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

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SEC. 188. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff upon such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Garnishee and defendant may be examined.

SEC. 189. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Inventory and return of attached property.

SEC. 190. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

Perishable property.

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SEC. 191. If any personal property attached be claimed under oath by a third party as his property, the sheriff shall deliver the property to such third party within five (5) days, if the plaintiff resides within the county, otherwise ten days, after notice to plaintiff's attorney, unless that plaintiff give to the sheriff good and sufficient bond to indemnify him against loss or damage, by reason of holding such property.

Attached property claimed by third party.

SEC. 192. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose, first, by paying the plaintiff the proceeds of all sales of perishable property sold by him, or any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment; second, if any balance remain due, and an execution shall have been issued on the judgment, he shall sell, under the execution, so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales shall be given and the sales conducted as in other cases of sales on execution.

Satisfaction of judgment.

SEC. 193. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

If balance due — how collected.

SEC. 194. If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertak-

Suit on undertaking.

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ing given pursuant to section 197, or he may proceed as in other cases, upon the return of an execution.

If judgment for defendant attachment discharged.

SEC. 195. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

Release of property attached.

SEC. 196. The defendant may, at any time, release any property in his hands to the sheriff, by virtue of any writ of attachment, by executing an undertaking as provided for in the next section; and all proceeds of sales and money collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment and delivered to the defendant, upon the justification of the sureties and the undertaking.

Undertaking for release required.

SEC. 197. Before releasing such attached property, as aforesaid, to the defendant, the sheriff shall require an undertaking executed by the defendant, and at least two sureties, residents and freeholders, or householders in the county, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, redeliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof, the defendant and sureties will pay to the plaintiff the full value of the property so released. The sheriff may fix the sum for which the undertaking shall be executed, and if necessary, in fixing such sum, to know the value of the property released, the same may be appraised by three disinterested persons, to be appointed by the sheriff; and if any sheriff shall release any property held by him, under or by virtue of any writ of attachment, without first taking such bond as herein required, or shall take an insufficient bond, he and his sureties shall be liable for the value of such property so released.

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SEC. 198. The defendant may also, at any time before the time for answering expires, apply, on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or the judge thereof, that the attachment be discharged on the ground that the writ was improperly issued.

Motion to discharge attachment.

SEC. 199. If the motion be made upon affidavits on the part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the order of attachment was made.

Motion—how opposed.

SEC. 200. If, upon such application, it shall satifactorily appear that the writ of attachment was improperly issued, it shall be discharged.

Discharge of attachment.

SEC. 201. The sheriff shall return the writ of attachment with the summons, if issued at the same time, otherwise within twenty days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto.

Return of writ.

SEC. 202. All liens by attachment shall accrue at the time the property of the defendant shall be attached by the officer charged with the execution of the writ, in the order in which they are levied; and said leins shall not be affected by any subsequent attachment, or by any judgment obtained subsequent thereto: *Provided*, That if two or more attachments shall be levied upon the same property at the same time, they shall share *pro rata* in the proceeds of said property; but in all cases the first attachment levied shall be first satisfied: *Provided, further*, That the first writ placed in the hands of the officer shall be levied first.

Liens—when accrued.

SEC. 203. There shall be kept in the recorder's office of the county recorder of each county, a book called "attachment book," in which shall be entered by such recorder, in alphabetical form, the names of any person or persons against whom any writ or notice of attachment has been filed in his office; there shall also be entered in said book the time such writ was filed. Such

"Attachment book," kept in recorder's office—entries in same.

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entries shall be made under appropriate heads for that purpose. For making such entry the recorder shall receive twenty-five cents, to be paid by the plaintiff in the action, and taxed and allowed to him as other costs and disbursements in the action.

Fees of clerk therefor.

ATTACHMENT OF BOATS.

SEC. 204. Any boat found within the waters of this territory is liable —

First. For all debts contracted by the master, owner, agent, clerk, or consignee thereof, on account of supplies furnished for the use of such boat, or on account of work done or materials furnished in building, repairing, fitting out, furnishing, or equipping such boat.

For what boats may be attached.

Second. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or any contract relative to the transportation of persons or property, entered into by the master, owner, agent, clerk, or consignee thereof.

Third. For all injuries to persons or property by such boat, or by the officers or crew, done in connection with the business of such boat.

SEC. 205. Claims growing out of any of the above causes are liens upon such boat, its apparel, tackling, furniture, and appendages, including barges and lighters, if owned by the owners of such boat, and used therewith, at the time suit is commenced.

Claims that are liens upon boats.

SEC. 206. Such liens shall take preference of any claim against the boat itself, or any or all of its owners, growing out of any other causes than those above enumerated, and as between themselves they shall be preferred in the following order:

Priority of liens.

First. Those resulting from wages for services on board such boat within the year then passed: *Providing*, That suit is brought within twenty days after the cessation of such labor.

Second. Those resulting from contracts made within this territory.

Third. All other causes.

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Limitation of actions against boats.

SEC. 207. Actions against boats under the provisions of this act shall not be brought after the lapse of one year from the time the cause of action accrued.

When lien to attach.

SEC. 208. The lien shall attach from the commencement of suit, subject only to such other liens as are of a preferred class.

SEC. 209. Any raft found in any of the waters of this territory shall be liable for all debts contracted by the owner, clerk, pilot, or agent thereof, on account of work done or services rendered for such raft.

Raft—liability of.

Claims growing out of either of the above causes shall be liens upon the raft, its tackling and appendages, for the term of twenty days from the time the right thereof accrued, and the same rules shall govern, and the same process shall be had, that are prescribed for similar liens against boats.

SEC. 210. Any person desiring to take the benefit of this act shall file with any judge or clerk of any court, or justice of the peace, having jurisdiction, a complaint in writing, duly verified by the plaintiff, or his agent or attorney, which complaint shall show that the plaintiff is entitled to the benefit of this act; whereupon such judge, clerk, or justice of the peace, shall issue his warrant to the proper officer, commanding him to seize the boat, its tackling, apparel, furniture, and appendages, and detain the same until released by due course of law.

Complaint and warrant.

Boat—how described.

SEC. 211. The complaint shall describe the boat by name as defendant, but if it have no name, then by such description as will enable the officer attaching to seize the proper property.

Summons—how directed and served.

SEC. 212. The usual summons shall be issued, directed to the boat by name, or to the property to be attached, if no name appear, and be served upon the master, owner, clerk, agent, or consignee thereof, and if none of them can be found, by posting up a copy in some conspicuous part of the boat, or property to be attached.

The warrant shall be served according to the directions it contains.

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Who may serve summons.

SEC. 213. Any sheriff, constable, or city marshal, or marshal of the territory, may serve the warrant and summons above mentioned, whether the same issue from the office of the clerk, or from a judge, or justice of the peace, and any clerk, judge or justice may, in his discretion, appoint any suitable person to serve such summons and warrant, who shall have all the power of a sheriff in the premises.

Who may appear for defendant.

SEC. 214. Any master, agent, clerk, consignee, or other person interested in the boat, may appear by himself, his agent, or attorney, for the defendant, and conduct the defense of the suit, and no continuance shall be granted to the plaintiff while the boat is in custody.

Boat—how discharged before judgment.

SEC. 215. The boat may be discharged at any time before final judgment, by giving bonds, with at least two sureties, to be approved by the officer serving the warrant, or by the clerk, judge, or justice who issued it, in a penalty double the plaintiff's demand and costs, conditioned that the obligors will pay the amount found due to the plaintiff with costs.

Execution against boat.

SEC. 216. If judgment be rendered against the boat before it is discharged, as provided in the last section, execution shall be issued against it, together with its apparel, tackling, furniture, and appendages.

Of sale under execution.

SEC. 217. The officer may sell any of the furniture and appendages of the boat, if by doing so he can satisfy the demand; if he sell the boat itself he must sell it to the bidder who will advance the amount necessary to satisfy the execution for the lowest fractional share of the boat, unless the person appearing for the boat require a different and equally convenient mode of sale.

Of fractional interests in boat.

SEC. 218. If a fractional share of the boat be thus sold, the purchaser shall hold such share or interest jointly with the owners.

Right of plaintiff to sue not affected.

SEC. 219. Nothing herein contained shall affect the right of a plaintiff to sue in the same manner as though this act had not been enacted.

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SEC. 220. It shall be sufficient for the plaintiff to allege in his complaint or affidavit, that the services were rendered or material was furnished the boat by its name. Name of boat sufficient in complaint.

CHAPTER V. — *Receivers.*

SEC. 221. A receiver may be appointed by the court in which an action is pending, or by the judge thereof: Appointment of receiver.

First. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to, or interest in, the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

Second. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt. Cases in which receivers may be appointed.

Third. After judgment, to carry the judgment into effect.

Fourth. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

Fifth. In cases when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights.

Sixth. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

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District court may appoint to take charge of effects of corporation dissolved.

SEC. 222. Upon the dissolution of any corporation, the district courts of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding indebtedness thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

Person interested not appointed without consent.

SEC. 223. No party or attorney, or person interested in an action, can be appointed receiver therein, without the written consent of the parties, filed with the clerk. If a receiver be appointed upon an *ex parte* application, the court, before making the order, may require from the applicant an undertaking with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver, and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause, and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

Appointment of receiver upon *ex parte* application.

Oath and undertaking of receiver.

SEC. 224. Before entering upon his duties the receiver must be sworn to perform them faithfully, and, with one or more sureties, approved by the court or judge, execute an undertaking to such person, and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

Powers of receiver.

SEC. 225. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same; to make transfers, and generally to

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do such acts respecting the property as the court may authorize.

Funds in hands of receiver may be invested.

SEC. 226. Funds in the hands of a receiver may be invested upon interest by order of the court; but no such order can be made except upon the consent of all the parties to the action.

CHAPTER VI.—*Deposit in Court.*

Deposit of money, &c., in court.

SEC. 227. When it is admitted by the pleading or examination of a party that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Disposition of money deposited.

SEC. 228. If the money is deposited in court it must be paid to the clerk, who must deposit it with the county treasurer, by him to be held subject to the order of the court. For the safe keeping of the money deposited with him the treasurer is liable on his official bond.

Punishment for disobeying order of court concerning deposit.

SEC. 229. Whenever, in the exercise of its authority, a court has ordered a deposit or delivery of money or other thing and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or thing and deposit or deliver it in conformity with the direction of the court.

TITLE VIII.

CHAPTER I.—*Judgments in General.*

Judgment—definition of.

SEC. 230. A judgment is the final determination of the rights of the parties in an action or proceeding.

For or against one or more of parties.

SEC. 231. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

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Judgment against one or more defendants and action as to others.

SEC. 232. In an action against several defendants the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper.

What relief plaintiff given.

SEC. 233. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

SEC. 234. An action may be dismissed, or a judgment of a non-suit entered, in the following cases:

First. By the plaintiff himself at any time before the trial, upon the payment of costs, if a counter claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon.

When action dismissed or non-suit entered.

Second. By either party upon the written consent of the other.

Third. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

Fourth. By the court, when, upon trial, and before the final submission of the case, the plaintiff abandons it.

Fifth. By the court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury.

The dismissal mentioned in the first two sub-divisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

Judgment upon merits.

SEC. 235. In every case, other than those mentioned in the last section, the judgments shall be rendered upon the merits.

CHAPTER II.—*Judgment upon Failure to Answer.*

SEC. 236. Judgment may be had if the defendant fail to answer the complaint, as follows:

First. In an action arising upon a contract for the

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recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk, upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section 75.

Second. In other actions, if no answer has been filed with the clerk within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant; and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint. If the taking of an account or the proof of any fact be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof; or may, in its discretion, order a reference for that purpose; and where the action is for the recovery of damages in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages the examination of a long account be necessary, by a reference as above provided.

Judgment when defendant fails to answer.

Third. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the territory, shall require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

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CHAPTER. III.—*Issues—Their Mode of Trial.*

Issues—when arise.

SEC. 237.—An issue arises when a fact or conclusion of law is maintained by the one party and is controverted by the other. Issues are of two kinds—first, of law; and, second, of fact.

Issue of law.

SEC. 238. An issue of law arises upon a demurrer to the complaint or answer, or replication, or to some part thereof.

Issue of fact.

SEC. 239. An issue of fact arises, first, upon a material allegation in the complaint, controverted by the answer; and, second, upon new matter in the answer controverted by the replication, or upon new matter in the replication, except an issue of law is joined thereon.

Issue of law—how tried.

SEC. 240. An issue of law must be tried by the court, unless it is referred upon consent.

What issues to be tried by jury.

SEC. 241. In actions for the recovery of specific real property with or without damages, and for an injunction to stay waste, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered by consent of the parties. In all cases where there are issues of both law and fact, the issues of law must be first disposed of, and in all cases issues of fact must be tried by a jury (except in actions which involve the settlement of accounts between parties), unless a jury shall be waived by the parties.

Issues of law first disposed of.

Causes entered upon court calendar.

SEC. 242. The clerk shall enter causes upon the calendar of the court according to the date of the issue. Causes once placed upon the calendar, for a general or special term, if not tried or heard at such term, shall remain upon the calendar from court to court until finally disposed of.

Either party may bring issue to trial.

SEC. 243. Either party may bring the issue to a trial, or to a hearing, and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with his case and take a dismissal of the action, or verdict, or a judgment, as the case may require.

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SEC. 244. A motion to postpone a trial on grounds of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed; and upon terms the court may, in its discretion, upon good cause shown, and in furtherance of justice, postpone a trial or proceeding upon other grounds than the absence of evidence.

Motion to postpone trial.

SEC. 245. The party postponing a trial in any court of record, shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken, before any judge or clerk of the court in which the cause is pending, or before a notary public, or other officer authorized to take depositions, as the court may indicate, which shall accordingly be done; and the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witness was produced.

If trial be postponed testimony of witnesses may be taken.

CHAPTER IV.—*Formation of the Jury.*

SEC. 246. When the action is called for trial by jury, the clerk shall prepare separate ballots containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballot becomes exhausted before the jury is complete, or if from any cause a juror is excused or discharged, the clerk shall, under the direction of the court, draw from the box furnished by the county commissioners, as provided by law, so many additional names as shall be nec-

Jury—how drawn.

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essary, in the manner provided by law, and if the names in the box are exhausted before the jury is complete, the sheriff shall summon, under the direction of the court, from the citizens of the vicinity, and not from bystanders, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three. Such consent shall be entered by the clerk in the minutes of the trial.

Oath of jurors.

SEC. 247. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance: That they, each of them, will well and truly try the matter at issue between ———, the plaintiff, and ———, the defendant, and a true verdict render according to the evidence.

Challenge of jurors.

SEC. 248. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and shall be either peremptory or for cause; each party shall be entitled to four peremptory challenges. Either party shall have the right to have the whole jury sworn to answer questions as to their competency in the first instance, and may examine them on any of the matters of challenge for cause.

SEC. 249. Challenges for cause may be taken on one or more of the following grounds:

First. A want of any of the qualifications prescribed by statute to render a person competent as a juror.

Second. Consanguinity or affinity within the third degree to either party.

Grounds of challenge for cause.

Third. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party.

Fourth. Having served as a juror or been a witness

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on a previous trial between the same parties for the same cause of action.

Fifth. Interest on the part of juror in the event of the action, or in the main question involved in the action, except the interest of the juror as a member or citizen of a municipal corporation.

Sixth. Having formed or expressed an unqualified opinion or belief as to the merits of the action.

Seventh. The existence of a state of mind in the juror evincing enmity against, or bias to, either party.

Challenge for cause—how tried.

SEC. 250. Challenges for cause shall be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

Order of challenge.

SEC. 251. The plaintiff first, and afterwards the defendant, shall complete his challenges for cause; they may then alternately, in the same order, have the right to challenge peremptorily.

Vacancy in jury—how filled.

SEC. 252. After each challenge sustained, the vacancy shall be filled before further challenges are made, and any new juror introduced may be challenged for cause, or if the party shall not have exhausted the number of peremptory challenges to which he is entitled, he may be challenged peremptorily.

CHAPTER V.—*Conduct of the Trial.*

SEC. 253. When the jury has been sworn, the trial shall proceed in the following order, unless the court, for good cause and special reasons, otherwise directs:

Order of procedure on trial.

First. The party on whom rests the burden of the issues may briefly state his case, and the evidence by which he expects to sustain it.

Second. The adverse party may then briefly state his defense, and the evidence he expects to offer in support of it.

Third. The party on whom rests the burden of the issues must first produce his evidence; the adverse party will then produce his evidence.

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Fourth. The parties will then be confined to rebutting evidence, unless the court, for good reason, in furtherance of justice, permits them to offer evidence in their original case.

Fifth. When the evidence is concluded, and either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered and signed by the party, or his attorney, asking the same, and delivered to the court.

Sixth. When the argument of the cause is concluded, the court shall give such instructions to the jury as may be necessary, which instructions shall be in writing, and be numbered and signed by the judge.

Seventh. Where either party asks special instructions to be given to the jury, the court shall either give each instruction as requested, or positively refuse to do so, or give the instruction with a modification, and shall mark or endorse upon each instruction so offered in such manner that it shall distinctly appear what instructions were given in whole or in part, and, in like manner, those refused, so that either party may except to the instructions as given or refused or modified, or to the modification. All instructions given by the court must be filed, together with those refused, as a part of the record. If any party to the trial desires to except to any instruction given by the court, or to the refusal of the court to give an instruction asked for, or any modification thereof, he shall reduce such exception to writing, and file the same with the clerk before the cause is submitted to the jury.

Exceptions to instructions.

SEC. 254. Whenever, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed shall speak to them on any subject connected with the trial.

Jury may view property or place.

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SEC. 255. If, after the impanelling of a jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, or a new jury may be sworn and the trial begun anew; or the jury may be discharged and a new jury then or afterwards impanelled.

Proceeding if juror become sick.

SEC. 256. After hearing the charge, the jury may either decide in court or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

Retirement of jury.

Jury to be kept together.

SEC. 257. Upon retiring for deliberation, the jury may take with them all papers, except depositions, accounts, or account books, which have been received as evidence in the case, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

What papers jury may take upon retiring.

SEC. 258. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court; upon their being brought into court the information required shall be given in presence of, or after notice to, the parties or counsel.

Disagreement of jury as to testimony.

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If no verdict, action tried again.

SEC. 259. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried, immediately or at a future time, as the court shall direct.

Adjournment of court.

SEC. 260. While the jury are absent the court may adjourn from time to time, in respect to other business; but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

Sealed verdict.

Proceeding when jury have agreed.

SEC. 261. When the jury have agreed upon their verdict they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. The verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. If any jurors disagree they must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If any one answers in the negative the jury must again be sent out.

Verdict.

Polling of jury.

If verdict informal or insufficient.

SEC. 262. If the verdict be informal or insufficient in not covering the whole issue or issues submitted, or in any particular, the verdict may be corrected by the jury under the advice of the court, or the jury may be again sent out.

If jury separate, admonished by court.

SEC. 263. If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be ad-

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dressed by any other person on the subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

CHAPTER VI.—*The Verdict.*

SEC. 264. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

Verdict, general or special

SEC. 265. In an action for the recovery of money only, or specific property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered upon the minutes. Where a special finding of facts shall be inconsistent with the general verdict the former shall control the latter, and the court shall give judgment accordingly.

When may be general or special.

SEC. 266. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counter claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

When jury to find amount of recovery.

SEC. 267. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury, if their verdict be in favor of

If for specific personal property, value assessed.

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the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property (but failure to find all of the facts mentioned in this section shall not invalidate the verdict), and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Entry by clerk upon receiving verdict.

SEC. 268. Upon receiving a verdict an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER VII.—*Trial by Court.*

Trial by jury may be waived.

SEC. 269. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract or for the recovery of specific real or personal property with or without damages, and, with the assent of the court, in other actions, in manner following:

First. By failing to appear at the trial.

Second. By written consent, in person or by attorney, filed with the clerk.

Third. By oral consent, in open court, entered in the minutes.

Judgment entered according to facts.

SEC. 270. Upon a trial of issue of fact by the court, judgment shall be entered in accordance with the finding of the court, and the finding, if required by either party, shall be reduced to writing and filed with the clerk. In the finding filed the facts found and the conclusions of law shall be separately stated. In such cases no judgment shall be reversed on appeal, for want of a finding in writing, at the instance of any party who at the time of the submission of the cause shall not have requested a finding in writing and had such request entered in the minutes of the court; nor in cases tried by the court, by

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a commissioner, or a referee, shall the judgment be reversed on appeal, for defects in the finding, unless exceptions be made in the court below for a defect in the finding; and in cases of exceptions for defective findings, the particular point or issue upon which the party requires a finding to be made, or the particular defect to be remedied, shall be specifically and particularly designated; and upon failure of the court to remedy, or, when tried by a commissioner or referee, to cause to be remedied by such commissioner or referee, the alleged defect, the party moving shall be entitled to his exceptions, and the same shall be settled by the judge as in other cases: *Provided*, That such exceptions shall be filed in the court and served on the attorney of the adverse party within five days after receiving from or giving to the adverse party written notice of the filing and finding: *Provided*, That when any cause is tried and submitted upon a written statement of facts agreed to by the parties or their attorneys, such statement shall have the effect of a special verdict or finding of facts, and judgment shall be pronounced thereon as upon a special verdict or finding of facts; and in such case no finding of facts shall be made unless such statement shall fail to embrace all the facts proved and in issue, in which case any additional fact may be found upon evidence which is not repugnant to the agreed statement.

Reference may be ordered.

SEC. 271. On a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered.

Judgment for plaintiff on issue of law.

SEC. 272. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two sub-divisions of section 236, upon the failure of defendant to answer. If judgment be for the defendant upon an issue of law, and the taking of an account or the proof of any fact be necessary to enable the court to complete the judgment, a reference may be ordered as in that section provided.

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CHAPTER VIII.—*Of References and Trials by Referees.*

SEC. 273. A reference may be ordered upon the agreement of the parties, filed with the clerk or entered on the minutes —

Reference by agreement.

First. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon.

Second. To ascertain a fact necessary to enable the court to proceed and determine a case.

SEC. 274. When the parties do not consent the court may, upon application of either, or of its own motion, direct a reference in the following cases:

First. When the trial of an issue of facts requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

Court may order a reference.

Second. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

Third. When a question of fact other than upon the pleadings arises, upon motion or otherwise, in any stage of the action.

Fourth. When it is necessary for the information of the court in a special proceeding.

SEC. 275. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge shall appoint one or more referees, not exceeding three, who reside in the county where the action or proceeding is triable, and against whom there is no legal objection, or the reference may be made to a court commissioner of the county where the cause is pending. Every referee, before acting as such, shall take and subscribe an oath (or affirmation), before some authorized officer, which shall be filed with the clerk of the court by which he is appointed, that he will honestly, impartially, and faith-

Reference, to whom ordered.

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fully perform the duties of referee in the action or matter referred to him, as required by law, to the best of his knowledge and ability.

SEC. 276. Either party may object to the appointment of any person as referee on one or more of the following grounds:

First. A want of any of the qualifications prescribed by statute to render a person competent as a juror.

Second. Consanguinity or affinity within the third degree to either party.

Third. Standing in the relation of guardian and ward, master and servant, employee and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party.

Objections to referee.

Fourth. Having served as a juror or been a witness on any trial between the same parties for the same cause of action.

Fifth. Interest on the part of such person in the event of the action, or in the main question involved in the action.

Sixth. Having formed or expressed an unqualified opinion or belief as to the merits of the action.

Seventh. The existence of a state of mind in such person evincing enmity against or bias to either party.

SEC. 277. The objection taken to the appointment of any person as referee shall be heard and disposed of by the court. Affidavits may be read and any person examined as a witness as to such objections.

Hearing objections to referee.

SEC. 278. The referees or commissioner shall report their findings in writing to the court within ten days (or within such further time as may be allowed by the court) after the testimony shall have been closed and the facts found, and the conclusions of law shall be separately stated therein. The finding of the referees or commissioner upon the whole issue shall stand as the finding of the court, and upon filing of the finding with the clerk

Report of referees.

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of the court judgment may be entered thereon in the same manner as if the action had been tried by the court. The finding of the referees or commissioner may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the finding reported shall have the effect of a special verdict.

CHAPTER IX.—*Exceptions.*

SEC. 279. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, court, or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge of a jury, or at any other time, from the calling of the action for trial to the rendering of the verdict or decision; but no exceptions shall be regarded on a motion for a new trial or an appeal, unless the exception be material and effect the substantial rights of the parties.

Exceptions—what are.

SEC. 280. The verdict of the jury, the final decision in an action or proceeding, an interlocutory order, or decision finally determining the rights of the parties, or some of them; an order or decision of which an appeal may be taken; an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance; an order made upon *ex parte* application, and an order or decision made in absence of a party—are deemed to have been excepted to.

What deemed to have been excepted to.

SEC. 281. The point of the exception shall be particularly stated, except as provided in relation to instructions, and may be delivered in writing to the judge, or, if the party require it, it shall be written down by the clerk. When delivered in writing or written down by the clerk it shall be made conformable to the truth or be at the time corrected until it is made so conformable. When not delivered in writing, or written down as above, it may be entered in the judge's minutes, and

Points of exceptions to be stated.

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afterwards settled in a statement of the case as provided in this act: *Provided*, That if the judge shall in any case refuse to allow an exception in accordance with the facts, any party aggrieved thereby may petition the supreme court for leave to prove the same, and shall have the right to do so in such mode and manner, and according to such regulations, as the supreme court may by rules prescribe.

Form of exceptions.

SEC. 282. No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain it, but no more, and the whole as briefly as possible.

When exceptions deemed taken on motion for new trial.

SEC. 283. When a cause has been tried by the court or by the referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on motion for a new trial, or on appeal, without any special notice that an exception is taken thereto.

CHAPTER X.—*New Trials.*

New trial—what is.

SEC. 284. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referees.

SEC. 285. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of said party:

Causes for new trial.

First. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion, by which either party was prevented from having a fair trial.

Second. Misconduct of the jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict, or to a finding on any question or questions submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavits of any one or more of the jurors.

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Third. Accident or surprise, which ordinary prudence could not have guarded against.

Fourth. Newly discovered evidence, material for the party making the application.

Motion for new trial — how made.

SEC. 286. When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the last section, it must be made upon affidavits; for any other cause it may be made at the option of the moving party, either upon the minutes of the court, or a bill of exceptions, or a statement of the case prepared as hereinafter provided.

Notice that must be given and time in which party must move for new trial.

SEC. 287. The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action was tried by a jury, or after notice of the decision of the court or referee, if the action was tried without a jury, file with the clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the court, or a bill of exceptions, or a statement of the case.

Motion upon affidavits.

First. If the motion is to be made upon affidavits, the moving party must, within ten days after serving the notice, or such further time as the court in which the action is pending or a judge thereof may allow, file such affidavits with the clerk and serve a copy upon the adverse party, who shall have ten days to file counter affidavits, a copy of which must be served upon the moving party.

Motion upon bill of exceptions.

Second. If the motion is to be made upon a bill of exceptions and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after service of the notice to prepare and obtain a settlement of a bill of exceptions as is provided after the entry of judgment, or after receiving notice of such entry provided by section 281, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been already settled and filed when the

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notice of motion is given, such bill shall be used on the motion.

Third. If the motion is to be made upon a statement of the case, the moving party must, within ten days after the service of the notice, or such further time as the court in which the action is pending, or the judge thereof, may allow, prepare a draft of the statement, and serve the same, or a copy thereof, upon the adverse party. If such proposed statement be not agreed to by the adverse party, he must, within ten days thereafter, prepare amendments thereto, and serve the same, or a copy thereof, upon the moving party. If the amendments be adopted, the statement shall be amended accordingly, and then presented to the judge who tried or heard the cause for settlement, or be delivered to the clerk of the court for the judge. If not adopted, the proposed statement and amendments shall, within ten days thereafter, be presented by the moving party to the judge, upon five days notice to the adverse party, or delivered to the clerk of the court for the judge; and thereupon the same proceedings for the settlement of the statement shall be taken by the parties and clerk and judge as are required for the settlement of bills of exception by section 281. If the action was heard by a referee, the same proceedings shall be had for the settlement of the statement by him as are required by that section for the settlement of bills of exception by a referee. If no amendments are served within the time designated, or, if served, are allowed, the proposed statement and amendments, if any, may be presented to the judge or referee for settlement without notice to the adverse party.

Motion made upon statement.

When the notice for the motion designates as the ground of the motion, the insufficiency of the evidence to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of motion, errors in law occurring at the

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trial, and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded on the hearing of the motion. It is the duty of the judge or referee, in settling the statement, to strike out of it all redundant and useless matter, and to make the statement truly represent the case, notwithstanding the assent of the parties to such redundant or useless matter, or to any inaccurate statement. When settled the statement shall be signed by the judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

Fourth. When the motion is to be made upon the minutes of the court, and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of motion must specify the particulars in which the evidence is alleged to be insufficient, and if the ground of the motion be errors in law occurring at the trial and excepted to by the moving party, the notice must specify the particular errors upon which the party will rely. If the notice do not contain the specifications here indicated, when the motion is made on the minutes of the court, the motion must be denied.

Motion upon insufficiency of evidence.

SEC. 288. The application for a new trial shall be heard at the earliest practicable period after the notice of the motion, if the motion is to be heard upon the minutes of the court, and in other cases after the affidavits, bills of exception, or statement, as the case may be, are filed, and may be brought to a hearing upon motion of either party. On such hearing reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence, and phonographic report of the testimony on file.

When motion shall be heard.

References on hearing of motion.

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SEC. 289. On all cases where notices of intention to move for a new trial in accordance with the provisions of chapter ten of the civil practice act, entitled "new trial," shall have been given, the judge of the court in which the trial shall have been had may, upon such terms as in his opinion shall be just, make an order staying proceedings in the cases until the motion for new trial shall have been disposed of.

On motion for new trial proceedings may be stayed.

CHAPTER XI. — *The Manner of Giving and Entering Judgment.*

SEC. 290. When trial by jury has been had, judgment shall be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

When the case is reserved for argument or further consideration, as mentioned in this section, it may be brought by either party before the court for argument.

Judgment—when entered.

If a counter claim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess, or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

SEC. 291. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

To recover possession of personal property.

SEC. 292. The clerk shall keep among the records of court a book for the entry of judgments, to be called the "Judgment Book," in which each judgment shall be entered, and shall specify clearly the relief granted or other determination of the action.

"Judgment Book."

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In case party die after verdict but before judgment.

SEC. 293. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon; such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

SEC. 294. Immediately after entering the judgment, the clerk shall attach together and file the following papers, which shall constitute the judgment roll:

First. In case the complaint be not answered by any defendant, the summons with the affidavit or proof of service, and the complaint, with a memorandum endorsed upon the complaint, that the default of the defendant in not answering was entered, and a copy of the judgment.

Judgment roll.

Second. In all other cases, the summons, pleadings, verdict of the jury, or finding of the court, commissioner, or referee, all bills of exceptions taken and filed in said action, copies of orders sustaining or overruling demurrers, a copy of the judgment, and copies of any orders relating to a change of parties.

SEC. 295. Immediately after filing a judgment roll, the clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it shall become a lien upon the real property of the judgment debtor, not exempt from execution, in the county, owned by him at the time, or which he may afterwards acquire, until said lien expires. The lien shall continue for six years, unless the judgment be previously satisfied.

Lien of judgment.

SEC. 296. The docket mentioned in the last section is a book which the clerk shall keep in his office, with each page divided into eight columns, and headed as follows: Judgment debtors; judgment creditors; judgment time of entry; where entered into the judgment book; appeals, when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket, under the head of

Judgment docket.

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judgment; if the judgment be for any other relief, a memorandum of the general character of the relief shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

Docket kept open.

SEC. 297. The docket kept by the clerk shall be open at all times during office hours for the inspection of the public, without charge; and it shall be the duty of the clerk to arrange the several dockets kept by him in such manner as to facilitate their inspection.

Transcript filed in another county.

SEC. 298. A transcript of the original docket, certified by the clerk, may be filed with the recorder of any other county, and, from the time of filing, the judgment shall become a lien upon all the real property of judgment debtor, not exempt from execution in such county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for six years, unless the judgment be previously satisfied.

Entry of satisfaction of judgment.

SEC. 299. Satisfaction of a judgment may be entered in the clerk's docket upon the execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor, or by his indorsement on the face, or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment, or make such indorsement, and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

When transcript of judgment from justice becomes a lien.

SEC. 300. A transcript of any judgment rendered by any justice of the peace, duly certified by said justice, may be filed with the recorder of the county in which such judgment shall have been rendered, and from the time of the filing of such judgment shall become a lein upon all the property of the judgment debtor, except personal property and property exempt from execution in such county,

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in the same manner and to the same extent as if such judgment had been originally rendered in a court of record. Said lien shall continue for six years, unless the judgment be previously satisfied.

TITLE VIII.—Of the Execution of the Judgment in Civil Actions.

Chapter I. — *The Execution.*

Time in which execution may issue.

Sec. 301. The party in whose favor judgment is given may, at any time within six years after the entry thereof, issue a writ of execution for its enforcement as prescribed in this chapter.

Sec. 302. The writ of execution shall be issued in the name of the people of the territory of Montana, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, and, if it be for money, the amount thereof, and the amount actually due thereon, and shall require the sheriff substantially as follows:

Execution—what shall contain, and its requisites.

First. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor; and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or any time thereafter.

Second. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property.

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Third. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law.

Fourth. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, damages, rents, or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in the first sub-division of this section.

SEC. 303. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action.

What to direct if all defendants not served with summons.

SEC. 304. The execution may be made returnable at any time not less than ten nor more than sixty days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed. When the execution shall have been returned, it shall be the duty of the clerk to attach the same to the judgment roll. If any real estate be levied upon the clerk shall record the execution and return thereof, at large, and certify the same under his hand as true copies, in a book to be called the "Execution Book," which book shall be indexed with the names of plaintiffs and defendants in execution, alphabetically arranged, and kept open at all times during office hours, for the inspection of the public, without charge, and

Return of execution.

Duty of clerk if real estate levied upon.

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shall be evidence of the contents of the originals whenever they, or any part thereof, may be destroyed, lost, or mutilated.

SEC. 305. When the judgment is for money or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor after the return of an execution against his property unsatisfied in whole or (in) part. When the judgment requires the sale of the property the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment by making the sale and applying the proceeds in conformity therewith. When the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

How shall be enforced.

SEC. 306. Notwithstanding the death of a party after judgment, execution thereon may be issued in case of the death of the plaintiff, the same as if he were living, upon the application of his executor or administrator, or successor in interest, by the court in which the judgment was rendered or exists; and in case of the decease of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued and executed against the property recovered in the same manner and with the same effect as if he were still living.

How issued in case of death of a party.

SEC. 307. Where the execution is against the property of the judgment debtor it may be issued to the sheriff of any county in the territory. Where it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

May issue to another county where defendant has property.

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SEC. 308. All goods, moneys, chattels, and other property, both real and personal, or any interest therein of the judgment debtor not exempt by law, and all property and rights of property, seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy property is not affected by the execution.

What property liable to execution.

SEC. 309. If any personal property levied upon be claimed under oath by a third party as his property, the sheriff shall deliver the property to such third person within five days after notice to plaintiff's attorney, if the plaintiff resides in the county, otherwise ten days, unless the plaintiff gives the sheriff good and sufficient bond to indemnify him against any loss or damage by reason of holding such property.

Property levied upon claimed by third party.

SEC. 310. The following property shall be exempt from execution, except as herein otherwise provided:

First. In all cases all wearing apparel of the judgment debtor and family; also all chairs, tables, desks, and books, to the value of one hundred dollars; and also all necessary household, table, and kitchen furniture of the judgment debtor, including stoves, stovepipes, and stove furniture, beds, bedding, and bedsteads, and provisions and fuel provided for individual or family use sufficient for two months, and also one horse, two cows with their calves, two swine, and fifty domestic fowls.

Property exempt from execution.

In addition to the above mentioned property, there shall be exempt the following named property:

First. To a farmer: Farming utensils or implements of husbandry, not exceeding in value six hundred

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dollars; also, two oxen, or one horse or mule, and their harness, one cart or wagon, and food for such oxen, horse, cows, or mule, for three months; also, all seeds, grain, or vegetables, actually provided, reserved, or on hand, for the purpose of planting or sowing at any time within six months, not exceeding in value the sum of two hundred dollars.

Second. To a mechanic or artisan: Tools or implements necessary to carry on his trade.

Third. To a surgeon physician or surgeon and dentist: The instruments and chest necessary to the exercise of his profession, with his scientific and professional libraries.

Fourth. To attorneys at law and ministers of the gospel: The law libraries of attorneys and counsellors, and the libraries of ministers of the gospel.

Fifth. To a miner: His cabin or dwelling, not exceeding in value the sum of five hundred dollars; also, his sluices, pipes, hose, windlasses, derrick, cars, pump, tools, implements, and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of five hundred dollars, and one horse, mule, or two oxen, with their harness, and food for such horse, mule, or oxen, for three months, when necessary to be used for any whim, windlass, derrick, car, pump, or hoisting gear.

Property exempt from execution.

Sixth. To a cartman, huckster, peddler, teamster, or laborer: One horse or mule, or two oxen, and their harness, and one cart or wagon, by the use of which such person habitually earns his living; and one vehicle and harness or other equipments used by a physician or surgeon or minister of the gospel in making his professional visits, with food for such horse, mule, or oxen, for three months.

Seventh. All fire engines, hooks and ladders, with the carts, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department, organized under any law of this territory.

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Eighth. All arms, uniforms, and accoutrements, required by law to be kept by any person.

Ninth. All court houses, jails, public offices and buildings, lots, grounds, and personal property; the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the court house, jail, and public offices belonging to any county of this territory; and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of the fire departments and military organizations, and the lots of ground thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this territory; but no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereon.

Property exempt from execution.

Tenth. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of the execution (or levy of attachment) when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of his family residing in this territory, supported wholly or in part by his labor.

In addition to the property now exempted by law from sale or levy on execution, there shall be exempted one sewing machine, of a value not exceeding one hundred dollars, in actual use by each debtor, or family of the debtor: *Provided,* That nothing in this section shall be held or construed to exempt any property belonging to any person who is not a *bona fide* resident of this territory.

SEC. 311. A homestead consisting of any quantity of land not exceeding eighty acres, used for agricultural purposes, and the dwelling house thereon, and its appurtenances, to be selected by the owner thereof, and not included in any town plot, city, or village; or, instead

Homestead exemption.

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thereof, at the option of the owner, a quantity of land not exceeding in amount one-fourth of an acre, being within a town plot, city, or village, and the dwelling house thereon, and its appurtenances, owned and occupied by any resident of this territory, shall not be subject to forced sale on execution, or any other final process from a court: *Provided*, Such homestead shall not exceed in value the sum of two thousand five hundred dollars.

Homestead exemption not to affect certain liens.

SEC. 312. Such exemption shall not affect any laborer's or mechanic's lein, or extend to any mortgage thereon, lawfully obtained; but such mortgage or other alienation of such homestead, by the owner thereof, if a married man, shall be void unless the wife join in the execution of the conveyance thereof; and nothing contained in this act shall be so construed as to affect any existing debt or debts contracted in this territory prior to the passage of this act.

Selection of homestead.

SEC. 313. Whenever a levy shall be made upon the lands or tenements of a householder whose homestead has has not been selected and set apart by metes and bounds, such householder may notify the officer at the time of making such levy, of what he regards as his homestead, with a description thereof, within the limits above described, and the remainder alone shall be subject to sale under such levy.

Proceeding if plaintiff dissatisfied with selection of homestead.

SEC. 314. If the plaintiff in execution shall be dissatisfied with the quantity of land selected and set apart as aforesaid, the officer making such levy shall cause the same to be surveyed, beginning at a point to be designated by the owner, and set off in a compact form, including the dwelling house and its appurtenances, to the amount specified in section 311 of this act; and the expense of such survey shall be chargeable on the execution and collected thereupon, if it shall appear after such survey that the owner of such land did not correctly state his metes and bounds, otherwise the expense of such survey shall be borne by the person directing the same.

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When dwelling house on leased land exempt.

SEC. 315. Any person owning and occupying any dwelling house on land not his own, which land he shall be rightfully in possession of by lease or otherwise, and claiming such house as his homestead, shall be entitled to the exemption of such house.

When homestead exempt after death of owner.

SEC. 316. Real estate exempt from forced sale on execution, or other final process, as the homestead of a family, shall likewise, after the death of the owner thereof, be exempt from the payment of his debts, in all cases in which any infant children of the said owner shall survive him; and no executor or administrator shall have a right to the possession of any real estate so exempted, or to the rents or profits of the same.

Removal or sale not to affect right of homestead.

SEC. 317. If the owner of a homestead may remove therefrom, or sell and convey the same, such removal or sale and conveyance shall not render such homestead subject or liable to forced sale on execution, or other final process issued against such owner; nor shall any judgment, or decree of a court, be a lien on such homestead, for any purpose whatever: *Provided*, That this act shall not be so construed as to in any manner relate to judgments or decrees rendered on the foreclosure of mortgages either equitable or legal.

Right of widow to homestead.

SEC. 318. On the death of the owner of such homestead, the same shall descend to his widow, and she shall take and hold the same during her natural life, free from the incumbrance of all judgments and claims against the deceased, or his estate, except mortgages lawfully executed thereon.

Right of homestead only applies to married men or head of a family.

SEC. 319. The provisions contained in sections numbered from section 311 to section 318, inclusive, shall only apply to married men, or the head of a family.

Manner in which writ shall be executed.

SEC. 320. The sheriff must execute the writ against the property of the judgment debtor, by levying upon a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment.

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Any excess of the proceeds over the judgment and accruing costs must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

SEC. 321. Before the sale of property on execution notice shall be given as follows:

First. In case of perishable property, by posting written notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.

Notice of sale of real estate under execution.

Second. In case of other personal property, by posting a similar notice in three public places in the township or city where the sale is to take place not less than five nor more than ten days successively.

Third. In case of real property, by posting a similar notice, particularly describing the property, for twenty days successively, in three public places of the township or city where the property is situated, and also where the property is to be sold, and publishing a brief notice of such sale once a week for the same period in some newspaper published in the county, if there be one, which notice shall be substantially as follows:

SHERIFF'S SALE.

JOHN DOE
vs.
RICHARD ROE.

Form of notice.

To be sold at sheriff's sale on the —— day of ———, 187–, at ———— [Here insert a brief description of property.]

Signed, JOHN DOE, *Sheriff.*

Any sheriff publishing a notice not in accordance with

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this form, and which shall cost more than such a notice, shall not be entitled to any costs for the publication of the same, but shall be personally liable for the payment of such publication.

Penalty if sheriff not follow form.

SEC. 322. An officer selling without the notice prescribed by the last section shall forfeit five hundred dollars to the aggrieved party in addition to his actual damages, and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), shall forfeit five hundred dollars.

Penalty for selling without notice.

SEC. 323. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery it shall be within view of those that attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately; and the sheriff shall be bound to follow such directions.

Sales—how made.

Judgment debtor may direct order of sale.

SEC. 324. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

Purchaser refusing to pay bid, the officer may sell again.

When bidder liable for loss.

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Purchaser refusing to pay, officer may reject bids from same.

SEC. 325. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

Liability of officer under last two sections.

SEC. 326. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

Delivery of property and certificate to purchaser.

SEC. 327. When the purchaser of any personal property capable of manual delivery shall pay the purchase money the officer making the sale shall deliver to the purchaser the property, and, if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title, and interest which the debtor had in and to such property on the day the execution was levied.

Certificate to purchaser when property not capable of manual delivery.

SEC. 328. When the purchaser of any personal property not capable of manual delivery shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title, and interest which the debtor had in and to such property on the day the execution was levied.

Rights of purchaser to real property.

SEC. 329. Upon a sale of real property the purchaser shall be substituted to and acquire all the right, title, and interest and claim of the judgment debtor therein, and when the estate is less than a lease-hold of two years' unexpired term the sale shall be absolute; in all other cases the property shall be subject to redemption as provided in this chapter. The officer shall give to the purchaser a certificate of sale, containing —

Certificate of sale.

First. A particular description of the real property sold.

Second. The price bid for each distinct lot or parcel.

Third. The whole price paid.

Fourth. When subject to redemption it shall be so stated.

A duplicate of such certificate shall be filed by the officer in the office of the recorder of the county.

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SEC. 330. Property sold subject to redemption, as provided in the last section, or any part separately, may be redeemed in the manner hereinafter provided, by the following persons or their successors in interest:

First. The judgment debtor or his successor in interest in the whole or in any part of the property.

Real estate sold may be redeemed.

Second. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

The persons mentioned in the second sub-division of this section are in this chapter termed redemptioners.

SEC. 331. The judgment debtor, or redemptioner, may redeem the property from the purchaser any time within six months after the sale, on paying the purchaser the amount of his purchase, with two per cent a month thereon in addition up to the time of redemption, together with the amount of any assessment or taxes which the purchaser may have paid thereon after purchase, and interest on such amount, and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien, with interest.

Right of judgment debtor or redemptioner to redeem from purchaser.

SEC. 332. If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent thereon in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and in addition to the amount of any liens held by said last redemption prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien.

Right to redeem from the redemptioner.

The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner, within sixty days after the last redemption,

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on paying the sum paid on the last previous redemption, with four per cent thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest.

Written notice of redemption must be given to the sheriff, and a duplicate filed with the recorder of the county; and if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the recorder; and if such notice be not filed, the property may be redeemed without paying such tax, assessment, or lien. If no redemption be made within six months after the sale the purchaser or his assignee is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner or assignee is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of six months from the date of the sale to redeem the property. If the judgment debtor redeem he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the recorder of the county in which the property is situated, and the recorder must note the record thereof in the margin of the record of the certificate of such sale.

Sheriff's deed.

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SEC. 333. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, as the case may be, or for him, to the officer who made the sale, or, in case his term of office has expired, then to his successor in office; and in all cases when, under the provisions of this act, a purchaser of property at execution sale shall be entitled to a conveyance of the same, such conveyance shall be executed to him by the officer who made the sale, if he still be in office, but in case the officer who made the sale be not in such office at the time the purchaser may be entitled to such conveyance, then the conveyance shall be executed by his successor in office.

Payments, to whom made under last two sections.

SEC. 334. A redemptioner shall produce to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

First. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or of the county where the judgment is docketed; or, if he redeem upon a mortgage or other lien, a note of the record thereof certified by the recorder.

Procedure for redemption.

Second. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto; and,

Third. An affidavit by himself or his agent, showing the amount then actually due on the lien.

SEC. 335. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted, with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it, in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor, or for the repair of

Court may restrain waste until redemption.

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fences, or for fuel for his family while he occupies the property.

Recovery of price paid in case purchaser be evicted

SEC. 336. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom, in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at sheriff's sale, or his successor in interest, fail to recover possession, in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest, or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and, when so revived, the said judgment shall have the same effect as an original judgment of the said court of that date, and bearing interest as aforesaid; and any other or after acquired property, rents, issues, or profits of the said debtor shall be liable to levy and sale under execution, in satisfaction of such debt: *Provided*, That no property of such debtor, sold *bona fide* before the filing of such petition, shall be subject to lien of said judgment: *And provided, further*, That notice of the filing of such petition shall be made by filing a notice thereof in the recorder's office of the county where such property may be situated, and that said judgment shall be revived in the name of the original plaintiff or plaintiffs, for the use of said petitioner, the party in interest.

Revival of original judgment.

Notice to revive judgment.

Contribution between judgment debtors.

SEC. 337. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation

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of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel re-payment from the principal. In such case the person so paying or contributing is entitled to the benefit of the judgment to enforce contribution or re-payment, if, within ten days after his payment, he file with the clerk of the court where judgment was rendered, notice of his payment and claim to contribution or re-payment. Upon a filing of such notice, the clerk must make an entry thereof in the margin of the docket.

Notice for claim to contribution.

CHAPTER II.—*Proceedings Supplementary to Execution.*

SEC. 338. When an execution against property of the judgment debtor, or any of several debtors in the same judgment, issued to the sheriff of the county where he resides, or, if he does not reside in this territory, to the sheriff of the county where the judgment roll is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the judge of the court, or probate judge, requiring such judgment debtor to appear and answer concerning his property, before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a judge, or referee, out of the county in which he resides, when proceedings are taken under the provisions of this chapter.

If execution returned unsatisfied judgment debtor may be made to answer as to his property.

SEC. 339. After issuing an execution against property, and upon proof by affidavit by a party or otherwise, to the satisfaction of the court, or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear, at a specified time and place, before such judge or referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the

Procedure to compel judgment creditor to answer.

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judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor, and bring him before such judge. Upon being brought before the judge he may be ordered to enter into an undertaking, with surety, that he will attend, from time to time, before the judge or referee, as shall be directed, during the pendency of the proceedings, and until the final determination thereof, and will not, in the meantime, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

Any person indebted to judgment debtor after execution issues may pay debt to sheriff

SEC. 340. After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt is a sufficient discharge for the amount so paid.

Investigation by judge of debts due, or property belonging to judgment debtor.

SEC. 341. After the issuing or return of an execution against property of a judgment debtor, or any one of several debtors in the same judgment, and upon proof, by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, before him, or a referee appointed by him, and answer concerning the same.

Judge may forbid transfer of property of judgment debtor.

The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution, and any interference therewith.

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Witness may be required to testify under this chapter.

SEC. 342. Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter, in the same manner as upon trial of an issue.

Judge may order property applied on execution.

SEC. 343. The judge or referee may order any property of the judgment debtor not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except, that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, shall not be so applied, when it shall be made to appear, by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Procedure where another party claims property of judgment debtor.

SEC. 344. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation, for the recovery of such interest or debt. And the court or judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

Disobedience of order, punishment for.

SEC. 345. If any person, party, or witness disobey an order of the referee, properly made, in the proceeding before him, under this chapter, he may be punished by the court or judge ordering the reference for a contempt.

TITLE IX.—ACTIONS IN PARTICULAR CASES.

CHAPTER I.—*Actions for the Foreclosure of Mortgages.*

SEC. 346. There shall be but one action for the recovery of any debt, or the enforcement of any rights, secured by mortgage upon real estate or personal prop-

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erty, which action shall be in accordance with the provisions of this chapter. In actions for the foreclosure of mortgages, the court shall have the power, by its judgment, to direct a sale of the incumbered property (or as much as may be necessary), and the application of the proceeds of the sale to the payment of the costs of the court, and expenses of the sale, and the amount due to the plaintiff; and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment shall be docketed for such balance against the defendant, or defendants, personally liable for the debt, and shall then become a lien on the real estate of such judgment debtor, as in other cases in which execution may be issued. No person holding a conveyance from or under the mortgagor, or of the property mortgaged, or having a lien thereon, which conveyance does not appear on record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, shall be as conclusive against the party holding such unrecorded conveyance or lien, as if he had been made a party to said action, and shall, in all respects, have the same force and effect.

Procedure to foreclose mortgages.

SEC. 347. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

Disposition of surplus moneys.

SEC. 348. If the debt for which the mortgage, lien, or incumbrance is held be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

When debt falls due at different times.

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CHAPTER II.—*Actions for Nuisance, Waste, and Wilful Trespass in Certain Cases.*

SEC. 349. Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Nuisances defined, and actions for.

SEC. 350. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for triple damages.

Waste—actions for.

SEC. 351. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the common or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor in a civil action in any court having jurisdiction.

Cutting or carrying away timber.

SEC. 352. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of the public highway or bridge upon the land or adjoining it.

Measure of damages under last section.

SEC. 353. If a person recover damages for a forcible or unlawful entry in or upon, or detention of, any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

Damages on forcible entry or detainer.

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CHAPTER III.—*Actions Concerning Real Estate.*

Action to determine an interest in real estate.

SEC. 354. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate, or interest.

When plaintiff not to recover costs.

SEC. 355. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

Judgment in case plaintiff's title terminate during suit.

SEC. 356. In an action for the recovery of real property where the plaintiff shows the right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

When value of improvements allowed as set-off.

SEC. 357. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under cover of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

Court may grant order to allow survey of real estate in action.

The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof, or a county judge, may, on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, and of any tunnels, shafts, or drifts thereon, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

Order for the survey.

SEC. 358. The order shall describe the property, and a copy thereof shall be served on the owner or occupant; and thereupon such party may enter upon the property,

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with necessary surveyors and assistants, and may make such survey and measurement; but if any unnecessary injury be done to the property he shall be liable therefor.

Mortgage of real property not deemed a conveyance.

SEC. 359. A mortgage of real property shall not be deemed a conveyance, whatever its term, so as to enable the owner of the mortgage to recover possession of the real property without foreclosure and sale.

Court may enjoin party in possession from injuring property.

SEC. 360. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution, before a conveyance.

Purchaser may recover damages for injury done.

SEC. 361. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after a sale and before possession is delivered under the conveyance.

Alienation not to prejudice right of claimant.

SEC. 362. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

What proof admitted in actions concerning mining claims.

SEC. 363. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this territory, must govern the decision of the action.

CHAPTER IV.—*Actions for the Partition of Real Property.*

Who entitled to bring actions for partition.

SEC. 364. When several co-tenants hold and are in possession of real property as parceners, joint tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of

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such property or a part thereof, if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 365. The interest of all such persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff, and if one or more of the parties, or the share, or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Interests of all parties set forth in complaint.

SEC. 366. No person having a conveyance of, or claiming a lien on, the property, or some part of it, need be made a party to the action, unless such conveyance or lien appear of record.

Who need not be made parties.

SEC. 367. Immediately after filing the complaint in the district court, the plaintiff shall file with the recorder of the county, or of the several counties, in which the property is situated, either a copy of such complaint or a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

Notice of pendency to be filed.

SEC. 368. The summons shall be directed to all the joint tenants and tenants in common, and all persons having an interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof; and, generally, to all persons unknown who have or claim any interest in the property.

To whom summons directed.

SEC. 369. If a party having a share or interest is unknown, or any one of the known parties reside out of the territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the sum-

Unknown parties served by publication.

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mons, as published, shall be accompanied by a brief description of the property which is the subject of the action.

SEC. 370. The defendants who have been personally served with the summons and a copy of the complaint, or who shall have appeared without such service, shall set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property; and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they shall correctly state the original amount and date of the same, and the true sum remaining due thereon; also, whether the same has been secured in any other way or not, and, if secured, the nature and extent of such security, or they shall be deemed to have waived their right to such lien.

Answer of defendant.

SEC. 371. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried, and determined by such action; and when a sale of the premises is necessary the title shall be ascertained by proof to the satisfaction of the court, before the judgment of sale shall be made, and where service of the complaint has been made by publication, like proof shall be required of the right of absent or unknown parties before such judgment is rendered, except that where there are several unknown persons having an interest in the property their rights may be considered together in the action, and not as between themselves.

Rights of plaintiffs and defendants may be determined in the action.

SEC. 372. Whenever, from any cause, it shall become, in the opinion of the court, impracticable or highly inconvenient to make a complete partition, in the first instance, among all the parties in interest, it shall be lawful for the court to first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon to adjudge and cause a partition to be made, as if such original co-tenants were the parties and sole parties in interest, and the only parties to the action, and therefore proceed in like manner to adjudge

Incomplete partition may be made.

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and make partition separately of each share or partition so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or allow them to remain tenants in common thereof, as they may desire.

SEC. 373. If it shall appear to the court by the certificate of the county recorder, or county clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or incumbrances of record upon such real property, or any part or portion thereof, which issued and were of record at the time of commencement of said action, and the persons holding such leins are not made parties to the action, the court shall either order such persons to be made parties to the action by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or, if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by the said persons and the parties to said action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

When lien-holders shall be made parties.

SEC. 374. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely thereon. In case such person be absent or his residence be unknown, service may be made by publication, or notice to his agents, under the direction of the court, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

Notice to lien-holders to appear.

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SEC. 375. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proof being made, it shall order a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided for the owners whose interests are remaining unknown, or are not ascertained.

Court may order sale or partition

SEC. 376. In making the partition, the referees shall divide the property and allot the several portions thereof to the respective parties, quantity and quality relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants, to aid them.

Duties of referees in making partition.

SEC. 377. The referees shall make a report of their proceedings, specifying therein the manner of executing their trusts, describing the property divided and the shares allotted to each party, with a particular description of each share.

Report of referees.

SEC. 378. If no exceptions be filed to the report, or upon hearing they should be overruled, the court shall confirm the same; or it may, upon exceptions, change, modify, or set it aside, and refer the matter to the same, or, if necessary, may appoint new referees. Upon the report, as confirmed, a final judgment shall be rendered, to the effect that such partition be effectual and valid forever, which judgment shall be binding and conclusive:

Action upon referee's report.

First. On all persons named in the complaint as parties to the action, or who shall have appeared therein, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as en-

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titled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the termination of a particular estate therein, and who, by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life.

Second. On all persons interested in the property, who may be unknown, to whom notice shall have been given of the action by publication.

Third. On all persons claiming from such parties or persons, or either of them, and to that end the action shall be deemed, and is hereby declared, to be a proceeding *in rem.*

Judgment upon the report.

A copy of the report of the referee, as confirmed, together with a copy of the final judgment therein rendered, duly certified, may be filed in the office of the county recorder of the county or counties in which the land is situated, whose duty it shall be to record the same, which filing and recording shall have the same force and effect as the filing and recording of a deed of conveyance.

Fourth. On all persons who have, or claim to have, conveyances to, or leins upon, or any interest in, the property, when such conveyances, liens, or interest did not appear of record at the time of the commencement of the proceedings for partition.

Not to affect tenants for years.

SEC. 379. But such judgment and partition shall not affect tenants for years, less than ten, to the whole of the property which is the subject of the partition.

Expenses apportioned.

SEC. 380. The expenses of the referees, including those of a surveyor and his assistant or assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court, in its discretion, to the referees, shall be apportioned among the different parties to the action equitably.

SEC. 381. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be

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made, shall thenceforth be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition in preference to such lien.

Lien confined to the interest to which attaches.

SEC. 382. When a part of the property only is ordered to be sold, if there be an estate for life or for years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Estate for life or years set off.

SEC. 383. The proceeds of the sale of the incumbered property shall be applied, under the direction of the court, as follows:

First. To pay its just proportion of the general costs of the action.

Second. To pay the costs of the reference.

Third. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment.

Proceeds of sale of incumbered property applied.

Fourth. The residue among the owners of the property sold, according to the respective shares therein.

SEC. 384. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

Lien-holder having other securities may be required to exhaust them.

SEC. 385. The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs; but in case no direction be given, all such proceeds and securities shall be paid into court or deposited therein, or as directed by the court.

Distribution of proceeds of sale.

SEC. 386. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the

Cause may be continued for distribution of proceeds.

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determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee, at the discretion of the court; and the court may, if necessary, require such parties to present the facts or law in controversy by pleadings as in an original action.

Notice and sales under this chapter.

SEC. 387. All sales of real property made by referees under this chapter shall be made by public auction to the highest bidder, upon notice in the manner required for the sale of real property on execution. The notice shall state the terms of sale; and if the property, or any part of it, is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Order for sale to direct terms.

SEC. 388. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the territory.

Referees may take security for purchase money when sold on credit.

SEC. 389. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant in the name of the guardian of such infant; and for other shares in the name of the clerk of the county and his successors in office.

Where tenancy for life or years is sold.

SEC. 390. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent the clerk shall enter the same in the minutes of the court.

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SEC. 391. If such consent be not given, filed, and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party or deposited in court for him, as the case may require.

Court may fix value of estate of tenant for life or years.

SEC. 392. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

If tenant for life or years be unknown, court to protect such interests.

SEC. 393. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of parties.

Contingent interests and vested rights to be settled.

SEC. 394. In all cases of sales of property the terms shall be made known at the time; and if the premises consist of distinct farms or lots they shall be sold separately.

Terms of sale made known. How premises sold.

SEC. 395. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property, being the subject of the actions, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Referees and guardian not to purchase.

SEC. 396. After completing the sale of the property, or any part thereof, ordered to be sold, the referee shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and condition of the sale, and the securities, if any, taken. The report shall be filed in the office of the clerk of the county where the property is situated.

Report of sale by referees.

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CHAPTER V.—*Actions for the Usurpation of an Office or Franchise.*

Writs of *scire facias* and *quo warranto* abolished.

SEC. 397. The writ of *scire facias*, the writ of *quo warranto*, and proceedings by information in the nature of *quo warranto*, are abolished. The remedies obtainable in these forms may hereafter be obtained by civil actions under the provisions of this chapter.

Same remedies by civil action under this chapter.

SEC. 398. An action may be brought by the district attorney, in the name of the people of this territory, upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within his district, in the territory; and it shall be the duty of the district attorney to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor; and in case such district attorney shall neglect or refuse to bring such action, upon the complaint of a private party, such action may be brought by such private party upon his own relation, in the name of the people of the territory.

Actions for usurping office or franchise.

SEC. 399. Whenever such action is brought, the district attorney or relator, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his rights thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the supreme court, or a district judge, for the arrest of such defendant and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

What set forth in the complaint.

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Judgment may determine rights of claimant and defendant.

SEC. 400. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

Rights of person entitled to office.

SEC. 401. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office.

Damages may be recovered.

SEC. 402. If judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

One action may settle rights of several claimants.

SEC. 403. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons in order to try their respective rights to such office or franchise.

If defendant found guilty, what judgment rendered.

SEC. 404. When a defendant, against whom such action has been brought, is adjudged guilty of usurping, or intruding into, or unlawfully holding any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine, not exceeding five thousand dollars, which fine, when collected, shall be paid into the treasury of the territory.

TITLE X.—OF APPEALS IN CIVIL ACTIONS.

CHAPTER I.—*Appeals in General.*

Judgment or order may be reviewed.

SEC. 405. A judgment or order in a civil action, except when expressly made final by this act, may be reviewed as prescribed by this act.

Order made out of court without notice.

SEC. 406. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the judge who made it, or may be

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vacated or modified on notice, in the manner in which other motions are made.

Party aggrieved may appeal.

SEC. 407. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party as the respondent.

SEC. 408. An appeal may be taken:

First. From a final judgment in an action or special proceeding commenced in the court in which the same is rendered, within one year after the entry of judgment. But an exception to the decision or verdict on the ground that it is not supported by the evidence, cannot be reviewed on an appeal from the judgment unless the appeal is taken within sixty days after the rendition of the judgment.

Cases in which an appeal may be taken.

Second. From a judgment rendered on an appeal from an inferior court, within ninety days after the entry of such judgment.

Third. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order granting or refusing to grant a change of the place of trial; from any special order made after final judgment, and from an interlocutory judgment in actions for partition of real property, within sixty days after the order or interlocutory judgment is made and entered in the minutes of the court or filed with the clerk.

How an appeal is taken.

SEC. 409. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party, or his attorney. The order of service is immaterial, but the appeal is ineffectual for any purpose unless, within five days after service of the notice of appeal, an undertaking be filed, or a deposit of money be made with the clerk, as here-

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inafter provided, or the undertaking be waived by the adverse party in writing.

SEC. 410. The undertaking on appeal must be in writing, and must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding three hundred dollars, or that sum must be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal.

Undertaking on appeal.

SEC. 411. If the appeal be from a judgment or order directing the payment of money, it does not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant, by two or more sureties, to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal.

Stay of execution on appeal.

SEC. 412. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court may appoint; or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court, or the judge thereof, may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

Appeal from judgment for delivery of personal property.

SEC. 413. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not

In case the execution directs a conveyance.

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be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court.

Stay where execution directs sale or possession of realty.

SEC. 414. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon, and if the judgment be affirmed, or the appeal dismissed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of the possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of such deficiency.

When the execution is stayed on appeal.

SEC. 415. Whenever an appeal is perfected as provided in the preceding sections of this chapter, it stays all further proceedings in the court below upon the judgment or order appealed from, or upon the matters embraced therein, and releases from levy property which has been levied upon under execution issued upon such judgment; but the court below may proceed upon any other matter embraced in the action, and not affected by the order appealed from; and the court below may, in its discretion, dispense with or limit the security required by this chapter, when the appellant is an executor, administrator, trustee, or other person acting in another's right. An appeal does not continue in force on an attachment unless an undertaking be executed and filed on the part of the appellant, by at least two sureties, in double the amount of the debt claimed by him, that the

When court may dispense with or limit security on appeal.

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appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sustained, and unless within five days after the entry of the order appealed from such appeal be perfected.

Undertakings may be in one instrument.

SEC. 416. The undertaking prescribed by sections 411, 412, 413, and 414, may be in one instrument or several, at the option of the appellant.

Justification of sureties on appeal.

SEC. 417. An undertaking upon appeal shall be of no effect unless it be accompanied by the affidavits of the sureties that they are each worth the amount specified therein, over and above all their just debts and liabilities, exclusive of property exempt from execution, except where the judgment exceeds three thousand dollars, and the undertaking is executed by more than two sureties, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

The adverse party, however, may except to the sufficiency of the sureties to the undertaking or undertakings mentioned in sections 411, 412, 413, and 414, at any time within thirty days after the filing of such undertaking; and unless they, or other sureties, within twenty days after the appellant, or appellants, shall have been served with notice of such exception, justify before a judge of the court below, a probate judge, or county clerk, upon five days' notice to the appellant, execution of the judgment or decree appealed from shall be no longer stayed; and in all cases where an undertaking is required on appeal, by the provisions of this act, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

SEC. 418. In cases not provided for in sections 410, 411, 412, and 413, the perfecting of an appeal by giving

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When undertaking stays proceedings in court below.

the undertaking, or making the deposit, mentioned in section 410, stays proceedings in the court below upon the judgment or order appealed from, except where it directs the sale of perishable property, in which case the court below may order the property to be sold, and the proceeds thereof to be deposited, to abide the judgment of the appellate court; and except, also, where it adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this territory; and except, also, where the order grants, or refuses to grant, a change of the place of trial of an action.

Cases excepted.

SEC. 419. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall state specifically the particular errors or grounds upon which he intends to rely on the appeal, and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified, and file the same with the clerk of the court, and give notice to the opposite party, or his attorney, of such filing. The respondent may, within five days thereafter, prepare amendments to such statement, and file the same, and serve notice thereof on the opposite party. The statement and amendments which may be filed shall be presented to the judge, or court, upon notice of two days to the opposite party, and a true statement shall thereupon be settled by the judge, or court. If no amendments are filed, the statement may be presented to the judge, or court, without any notice to the respondent.

Appellant to prepare statement on appeal.

Amendments by respondent.

SEC. 420. If the party shall omit to make a statement within the time above limited, he shall be deemed to have waived his right thereto; and when a statement is made, and the parties shall omit, within the several times above limited, the one party to propose amendments, the other to notify an appearance before the

When statement and amendments to be deemed waived.

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judge, they shall respectively be deemed, the former to have agreed to the statement as prepared, and the latter to have agreed to the amendments as proposed; but the judge who heard the cause, shall, notwithstanding such omission, or implied agreement, have power to correct any misstatement of facts, or of his rulings, which such statement may contain.

Time may be enlarged for good cause.

SEC. 421. The several periods of time above limited may be enlarged, upon good cause shown, by the judge before whom the cause was tried.

Statement when settled to be signed and authenticated.

SEC. 422. The statement, when settled by the judge, shall be signed by him, with his certificate that the same has been allowed, and is correct; when the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them, and is correct. In either case, when settled or agreed upon, it shall be filed with the clerk.

Copy of statement annexed to transcript.

SEC. 423. A copy of the statement shall be annexed to a copy of so much of the judgment roll as shall be included in the transcript on appeal, if the appeal be from the judgment; if the appeal be from an order, to a copy of such order.

Not applicable to appeals from an order based on affidavits.

SEC. 424. The provisions of the last five preceding sections shall not apply to appeals taken from an order made upon affidavit filed; but such affidavit shall be annexed to the order, in the place of the statement mentioned in those sections.

Transcript to present points relied on.

SEC. 425. On an appeal from a final judgment, the appellant shall furnish the court with a transcript of the notice of appeal, undertaking or undertakings on appeal, the pleadings or amended pleadings, as the case may be, which form the issues tried in the case, the judgment, and such other parts of the judgment roll, and no more, as are necessary to present or explain the points relied on, and the statement, if there be one, certified by the attorneys of the parties to the appeal, or by the clerk, to be correct. On appeal from a judgment rendered on an

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appeal, or from an order, the appellant shall furnish the court with a copy of the notice of appeal, undertaking or undertakings on appeal, the judgment or order appealed from, and a copy of the papers used on the hearing in the court below, such copies to be certified in like manner to be correct. If any written opinion be placed on file, in rendering the judgment or making the order in the court below, a copy shall be furnished. If the appellant fail to furnish the requisite papers, the appeal may be dismissed.

When appeal may be dismissed.

SEC. 426. The dismissal of an appeal is in effect an affirmation of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

Effect of dismissal of an appeal.

SEC. 427. Upon an appeal from a judgment the court may review the verdict or decision, and any intermediate order or decision excepted to, which involves the merits or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

What court may review on appeal.

SEC. 428. Upon an appeal from a judgment or order, the appellate court may reverse, affirm, or modify the the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside, or confirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on the appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

Powers of the appellate court.

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SEC. 429. Appeals in the supreme court may be brought to a hearing by either party, upon notice of three days to the opposite parties. Before the argument each party shall furnish to the other, and each of the justices, a copy of his points and authorities; or either party may file one copy thereof with the clerk, who shall cause the requisite copies to be made.

Appeal brought to a hearing.

SEC. 430. When judgment is rendered upon appeal, it shall be certified by the clerk of the supreme court to the clerk with whom the judgment roll is filed, or the order appealed from is entered. In cases of appeal from the judgment, the clerk with whom the roll is filed shall attach the certificate to the judgment roll, and enter a minute of the judgment of the supreme court on the docket against the original entry. In cases of appeal from an order, the clerk shall enter at length, in the records of the court, the certificate received, and minute against the entry of the order appealed from reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified, as the case may be, by the supreme court on appeal.

Entry of judgment on appeal by the clerk.

CHAPTER II.—*Appeals to the Supreme Court from the District Courts.*

SEC. 431. An appeal may be taken to the supreme court from the district courts in the following cases:

First. From a final judgment, or any part thereof, entered in an action or special proceeding commenced in those courts, or brought into those courts from other courts.

Second. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial; from any special order made after final judgment; and from such interlocutory judgment in actions for partitions as determines the rights

Cases in which an appeal may be taken to the supreme court.

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and interests of the respective parties, and directs partition to be made.

CHAPTER III. — *Appeals from Probate to District Courts.*

SEC. 432. An appeal may be taken from a probate court to the district court of the district in which the probate court is held, in the following cases:

First. From an order or decree admitting a will to probate or refusing the same.

Second. From an order setting apart property or making an allowance for the widow or children.

Third. From an order granting letters testamentary or of administration, or appointing a guardian of an infant or of an insane person, or of a person incompetent to manage his property, or refusing to grant such letters or to make such appointment, or making such letters of appointment.

Cases in which an appeal may be taken from probate to district courts.

Fourth. From an order directing the sale or conveyance of real property.

Fifth. From an order or decree by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or by which such allowance or direction is refused.

Sixth. From an order made on the settlement of an executor, administrator, or guardian.

SEC. 433. The appeal shall be taken within thirty days after the order or decree appealed from is entered with the clerk.

Time in which shall be taken.

SEC. 434. Appeals from the probate court shall be brought to a hearing at the earliest period practicable. For the failure to prosecute an appeal or unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed.

Appeal brought to a hearing.

SEC. 435. In cases other than those provided for in section numbered 432, any party feeling aggrieved by the judgment of the probate court in any civil action may appeal therefrom to the district court for the county

Other cases in which party may appeal.

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in which said probate court is held, or to which it may be attached for judicial purposes. The party appealing shall be known as the appellant, and the adverse party as the respondent.

Appeals under last section.

SEC. 436. All appeals taken by virtue of the provisions of the last section shall be perfected within thirty days from the rendition of the judgment appealed from, and shall be tried *de novo*, in said district court.

How appeal may be taken.

SEC. 437. The appeal shall be taken by filing with the clerk of the court in which the judgment appealed from is entered, or with the judge of said court, if there be no clerk, a notice stating the appeal from the same, and serving a copy of such notice upon the adverse party or his attorney.

Undertaking on appeal.

SEC. 438. The party appealing shall file with the judge or clerk of said court, within five days from the filing of the notice of appeal, as provided in the last section, an undertaking in double the amount of the judgment appealed from, or if the judgment be for the recovery of specific personal property, in double the value of such property, with at least two sufficient sureties, and conditioned that the party appealing will pay any judgment that may be rendered against him in the district court, as well as all costs that may be awarded against him, and for the prosecution of such appeal with effect.

When an undertaking for costs to be given.

SEC. 439. If the party appealing be the party in whose favor judgment was rendered, he shall likewise execute and file an undertaking as aforesaid, in a sum equal to double the amount of the costs in the case, conditioned to pay all costs that may be adjudged against him, and for the prosecution of such appeal with effect.

Justification of sureties under two preceding chapters.

SEC. 440. The undertaking provided for in the two preceding sections, shall be accompanied by the affidavit of the sureties that they are residents of the county, and householders or freeholders thereof, and each worth the amount specified in the undertaking, over and above their debts, liabilities, and property by law exempt from execution, but several sureties may state that they are worth less than the amount mentioned in the undertaking, be-

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side such exemptions, if the whole amount equals the amount of two sufficient sureties.

SEC. 441. Within ten days after filing the notice of appeal and undertaking provided for in the preceding sections, and payment of fees therefor, the said judge or clerk of said court shall make a full and comple transcript from the docket of all proceedings had in said action, and transmit the same, together with the complaint, answer, motions, pleadings, and all other papers pertaining to or belonging to said cause, to the clerk of said district court.

Transcript on appeal.

SEC. 442. If any execution shall have been issued upon a judgment appealed from, the judge or clerk of said court, upon receiving the notice and undertaking as hereinbefore provided, shall issue an order directing the officer having such execution in his possession, or charged with the execution of the same, to stay all proceedings thereunder. Such officer, upon the payment of his fees for services rendered on such execution, shall thereupon relinquish all property levied upon by him, and deliver the same, together with all money collected from sales or otherwise, to the judgment debtor.

Stay of proceedings in court below after appeal.

SEC. 443. If the party appealing to the district court, as provided in this act, shall fail to reduce or enlarge the judgment appealed from, ten dollars or more, or revise the same in said district court, he shall not recover any of the costs of appeal.

When party appealing not to recover costs.

SEC. 444. That all appeals taken by virtue of this act shall be tried in the district court upon the papers in the cause, as if the same had originally been instituted in said court, unless said court, upon such terms as may be just, allow other papers to be filed therein, and both appellant and respondent shall have the benefit of objection taken in said probate court.

Case on appeal tried *de novo*.

SEC. 445. That the sheriffs of the different counties of this territory are charged with the execution of process issued from said probate court, in like manner as provided for in cases in the district court, for which services they shall receive fees as provided by law.

Sheriff to execute process of probate court.

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TITLE XI.

CHAPTER I.—*Proceedings against Joint Debtors.*

SEC. 446. When a judgment is recovered against one or more of several persons jointly indebted upon an obligation, by proceeding as provided in section 75, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

Defendants not originally served may be summoned after judgment.

SEC. 447. The summons, as provided in the last section, shall describe the judgment and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and returnable within the same time, as the original summons. It shall not be necessary to file a new complaint.

Summons under last section.

SEC. 448. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment or some part thereof remains unsatisfied, and shall specify the amount due thereon.

Affidavit to accompany summons.

SEC. 449. Upon such summons the defendant may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitations.

The answer.

SEC. 450. If the defendant in his answer deny the judgment or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

Pleadings in such case.

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Issues — how tried.

Verdict.

SEC. 451. The issues formed may be tried as in other cases; but when the defendant denies in his answer any liability on the obligations upon which the judgment is rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER II.—*Confession of Judgment without Action.*

Manner in which judgment by confession may be entered.

SEC. 452. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts.

SEC. 453. A statement in writing shall be made and signed by the defendant, and verified by his oath, to the following effect:

First. It shall authorize the entry of judgment for a specified sum.

Statement to authorize entry of.

Second. If it be for money due or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due or to become due.

Third. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

Statement filed and judgment entered.

SEC. 454. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with costs. The statement and affidavit with the judgment endorsed shall thereupon become the judgment roll.

CHAPTER III.—*Submitting a Controversy without Action.*

SEC. 455. Parties to a question in difference which might be the subject of a civil action, may without action agree upon a case containing the facts upon which the

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controversy depends, and present a submission of the same to any court which should have jurisdiction if an action had been brought; but it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon, as if an action were depending.

Controversy, how submitted without action.

SEC. 456. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.

Entry of judgment.

SEC. 457. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

How judgment entered or appealed from.

CHAPTER IV. — *Offer of the Defendant to Compromise the Whole or Part of an Action.*

SEC. 458. The defendant may at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer and give notice thereof within five days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn and shall not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

Offer to compromise.

CHAPTER V. — *Of Arbitrations.*

SEC. 459. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

Submission of controversy to arbitration.

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To be in writing.

SEC. 460. The submission to arbitration shall be in writing, and may be to one or more persons.

May be made an order of court.

SEC. 461. It may be stipulated in the submission that it be entered as an order of the probate court or of the district court, for which purpose it shall be filed with the clerk of the court. The clerk shall thereupon enter into his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before award is made.

Of the award.

Powers of arbitrators.

SEC. 462. Arbitrators shall have power to appoint a time and place for hearing; to adjourn from time to time; to administer oaths to witnesses; to hear allegations and evidence of the parties, and to make award thereon.

Action of arbitrators.

SEC. 463. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matter in controversy, and to make a just award according to their understanding.

To be sworn.

Award to be in writing and filed.

SEC. 464. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such

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application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the judgment book, and shall thereupon have the effect of a judgment.

When to have effect of judgment.

SEC. 465. The court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, at its discretion:

First. That it was procured by corruption or fraud.

Second. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing or refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced.

Award may be vacated.

Third. That the arbitrators exceeded their powers in making their award; or that they refused or improperly omitted to consider a part of the matter submitted to them; or that the award is indefinite, or cannot be performed.

SEC. 466. The court may, on motion, modify or correct the award where it appears —

First. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein.

Second. When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matters submitted.

Award may be modified or corrected.

Third. When the award, though imperfect in form, could have been amended if it had been a verdict or the imperfection disregarded.

SEC. 467. The decison upon the motion shall be subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before motion is made shall not be subject to appeal.

Decision of court as to award may appealed from.

SEC. 468. If a submission to arbitration be revoked and an action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

Recovery in case decision be revoked.

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CHAPTER VI.

Order defined

SEC. 469. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Motions—where made.

SEC. 470. Motions shall be made in the county in which the action is brought, or in any adjoining county in the same district: *Provided, however*, That in case of the absence of the judge of the district from his district, such motion may be made before the judge of any adjoining district. Written notice of a motion, as provided in this act, shall only be required in case of a motion made out of term time. Notice of a motion made in term time, except those made during the progress of a trial, shall be entered in a book to be kept for that purpose, and called the "motion book;" and such motion shall be for hearing after twenty-four hours from the time such notice is entered in the motion book.

Notice of motion.

Time in which notice shall given.

SEC. 471. When a written notice of a motion is necessary, it shall be given, if the court be held in the same district with both parties, five days before the time appointed for the hearing, otherwise ten days; but the court or judge may prescribe a shorter time.

Motions to show cause and transfer of to other judge.

SEC. 472. When a notice of motion is given, or an order to show cause is made returnable before a judge out of court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge before whom in might originally have been brought.

Enforcement of order to pay money.

SEC. 473. Whenever an order for the payment of a sum of money is made by a court, pursuant to the provisions of this code, it may be enforced by execution in the same manner as if it were a judgment.

CHAPTER VII.—*Notices and Filing and Service of Papers.*

Service of notices to be in writing.

SEC. 474. Notices must be in writing, and notices and other papers may be served upon the party or attor-

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ney in the manner prescribed in this chapter, when not otherwise provided by this code.

SEC. 475. The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

First. If upon an attorney, it may be made during his absence from his office by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the post office, directed to such attorney.

Manner of service of motions, and upon whom served.

Second. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope, into the post office, directed to such party.

SEC. 476. Service by mail may be made when the person making the service and the person on whom it is to be made reside in different places, between which there is a regular communication by mail.

Service by mail.

SEC. 477. In case of service by mail the notice or other paper shall be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid. And in such case the time of service shall be increased one day for every twenty-five miles distance between the place of deposit and the place of address: *Provided,* That service in any case shall be deemed complete at the end of forty days from the date of its deposit in the post office.

Manner of service by mail.

SEC. 478. A defendant shall be deemed to appear in action when he answers, demurs, or gives the plaintiff a

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written notice of his appearance, or when an attorney gives notice of an appearance for him. After appearance, a defendant, or his attorney, shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But when a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail.

After defendant has appeared all notices given to him or his attorney.

SEC. 479. When a plaintiff or a defendant who has appeared resides out of the territory and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where the party has an attorney in the action or proceeding, the service of papers when required shall be upon the attorney instead of the party, except of subpœnas, writs, and other process, issued in the suit, and of papers to bring him into contempt.

Notices when non-resident defendant has appeared.

SEC. 480. The foregoing provisions of this chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

Application of the foregoing provisions as to notices.

CHAPTER VIII.—*Of Costs.*

SEC. 481. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in any action in the supreme court, district courts, and probate courts, his costs and necessary disbursements in the action or special proceeding in the nature of an action.

Compensation of attorneys.

Costs.

SEC. 482. Cost may be allowed, of course, to the plaintiff upon a judgment in his favor, in the following cases:

First. In an action for the recovery of real property.

Second. In an action to recover the possession of personal property when the value of the property amounts to fifty dollars or over. Such value shall be determined by the jury, court, or referee by whom the action is tried.

When costs allowed plaintiff of right.

Third. In an action for the recovery of money or damages when plaintiff recovers fifty dollars and over.

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Fourth. In special proceedings in the nature of an action.

SEC. 483. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were, at the commencement of the previous action, openly within the territory; but the disbursements of the plaintiff shall be allowed to him in each action.

What costs allowed if the plaintiff brings several actions on same bond.

SEC. 484. Costs shall be allowed, of course, to the defendant, upon a judgment in his favor in the actions mentioned in section 482 of this act, and in a special proceeding in the nature of an action.

What costs allowed of course to defendant.

SEC. 485. In other actions than those mentioned in section 482 of this act, costs may be allowed or not; and, if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action for the recovery of money or damages when the plaintiff recovers less than fifty dollars; nor in an action to recover the possession of personal property when the value of the property is less than fifty dollars.

When costs may be allowed in the discretion of the court.

SEC. 486. When there are several defendants in the actions mentioned in section 482 of this act, not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgment in their favor.

Cases in which court can allow costs to successful defendants.

SEC. 487. In the following cases the costs of an appeal shall be in the discretion of the court:

First. When a new trial is ordered.

Second. When a judgment is modified.

Cases where costs are discretionary on appeal.

SEC. 488. The fees of referees shall be eight dollars to each for every day spent in the business of the refer-

Fees of referees.

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ence; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Of costs on appeal from probate or justice's courts.

SEC. 489. In all cases of appeal from the judgment of probate court or justice of the peace, when the judgment of such probate court or justice of the peace shall be wholly affirmed or reversed, the party succeeding shall recover from the opposite party his costs, not only in the district court, but before the probate court or justice of the peace, and shall have his execution therefor. When the judgment of the court below shall be affirmed in part, then the court shall divide the costs between the parties according to the justice of the case.

Costs on postponement of trial.

SEC. 490. When an application is made to a court or referee to postpone a trial, the payment of the costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

Costs in case tender is made and deposited in court.

SEC. 491. When, on an action for the recovery of money only, the defendant in his answer alleges that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

Costs in cases prosecuted by or against an administrator or trustee.

SEC. 492. In an action prosecuted or defended by an executor, administrator, or trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in action by and against a person prosecuting or defending his own right; but such costs shall by the judgment be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for the mismanagement or bad faith in the action or defense.

SEC. 493. When the decision of a court of inferior jurisdiction in a special proceeding is brought before a

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court of higher jurisdiction for a review in other way than by appeal, the same costs shall be allowed as in causes on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

When case is reviewed by a court of higher jurisdiction.

SEC. 494. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the clerk of the court, within two days after the verdict or decision of the court, a memorandum of the items of his costs and necessary disbursements in the action or proceeding; which memorandum shall be verified by the oath of the party, or his attorney, stating that the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding.

Memorandum of costs to be delivered to clerk.

SEC. 495. But such memorandum need not include the legal fees or costs of any officer of the court, or any witness fees when an affidavit of such witness' attendance is required by law to be made.

Memorandum not to include certain fees or costs.

SEC. 496. If any party shall include in such memorandum any item to which he is not entitled, or if any clerk, sheriff, referee, or other officer shall include such item in the taxed costs, and a motion to retax the same shall be made by the party against whom the same is taxed, and if such motion to retax shall prevail, there shall be taxed, as a part of the cost of such motion, a docket fee of $25, and judgment therefor, with the other costs allowed by law, shall be entered against the party, sheriff, referee, clerk, or other officer who so unlawfully taxed the same, and the same may be off-set against any costs or judgment in favor of the party or officer so improperly taxing such cost, and against the party making such motion; or if no such judgment exists, the court may direct that the party making such motion have execution therefor.

Penalty for including illegal items of costs in memorandum.

SEC. 497. A party dissatisfied with the costs claimed may, within ten days after notice of filing of the bill of costs, file a motion to have the same taxed by the court in which the judgment was rendered, or by the judge thereof, at chambers.

Motion to retax costs.

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No costs allowed witness unless affidavit of attendance made.

SEC. 498. *Provided, however,* That no allowance or charge shall be made for the attendance of witnesses, unless the witness shall make affidavit before the clerk of the number of days he or she actually attended, and of the distance he or she shall have traveled, and that such attendance was at the instance of one or both parties, or his, her, or their attorney.

Memorandum of costs awarded in appellate court.

SEC. 499. Whenever costs are awarded to a party by an appellate court, if he claims such costs he must, within thirty days after the remittitur is filed with the clerk below, deliver to such clerk a memorandum of his costs, verified as prescribed by the preceding section, and thereafter he may have an execution therefor, as upon a judgment.

Interest and costs to be included in judgment.

SEC. 500. The clerk shall include in the judgment entered up by him any interest on the verdict or decision of the court, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained, and he shall, within two days after the same shall be taxed or ascertained, if not included in the judgment, insert the same in a blank left in the judgment for that purpose, and shall make a similar insertion of the costs in the copies and docket of the judgment.

Bond of costs may be required of non-residents.

SEC. 501. When a plaintiff in an action resides out of the territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new additional undertaking be executed and filed.

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When action may be dismissed for want of cost-bond.

SEC. 502. After the lapse of thirty days from the service of notice that security is required, or of an order that new or additional security, upon proof thereof, and that no undertaking, as required, has been filed, the court or judge may order the action to be dismissed.

When poor person may commence and prosecute suit without costs.

SEC. 503. That any person may commence and prosecute an action in any of the courts in this territory who will file an affidavit, stating that he has a good cause of action, that he is unable to pay the costs in money, or to procure security to secure the same; then it is hereby made the duty of the officers of the courts to issue all writs, and serve the same, without demanding or receiving their fees in advance.

Certain officers may prosecute or defend suit without bond for costs.

SEC. 504. Whenever it shall be necessary for any territorial, district, or county officer to commence, prosecute, or defend any suit by attachment, or otherwise, on behalf and in the name of the territory of Montana, under the provisions of any statute of this territory, such officer shall so commence, prosecute, or defend any such suit without giving bond; nor shall any such officer, when prosecuting any suit on behalf of the territory, or any county thereof, be required to pay or deposit any fee or amount before or during the prosecution of any such suit; nor shall any officer so prosecuting or defending be taxed with costs or damage, but such cost or damage, when such officer shall fail to sustain his suit, shall be taxed to the said county or territory, as the case may be.

Fees to be paid on demand.

SEC. 505. Each party to a civil action shall be required to pay the fees fixed by law for the performance of any service or duty by any officer of such court at the instance of such party at the time such service is rendered, except in the case hereinbefore mentioned; and no such officer shall be required to perform such service or duty unless the fees fixed therefor shall, on demand, be first paid or tendered.

CHAPTER IX. — *Miscellaneous Provisions.*

Rules for practice in courts.

SEC. 506. The supreme court, and each of the district courts, shall respectively have power to make rules and

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regulations for governing their practice and procedure in reference to all matters not provided for by law.

Acknowledgment of deeds, etc.—who may take and certify.

SEC. 507. The judges of the supreme court, of the district courts, and of the probate courts, shall have power, in any part of the territory, and justices of the peace within their respective counties shall have power, to take and certify:

First. The proof and acknowledgment of a conveyance of real property, or any other instrument required to be proved or acknowledged.

Second. An affidavit to be used in any court of justice in this territory.

Action in court not affected by vacancy.

SEC. 508. No action or proceeding in a court of justice shall be affected by a vacancy in the office of all or any of the judges, or by a failure of a term thereof.

Written proceedings in the English language.

SEC. 509. Every written proceeding in a court of justice in this territory, or before a judicial officer, shall be in the English language, but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals, in the customary manner.

What courts to have a seal.

SEC. 510. Each of the following courts, and no others, shall have a seal:

First. The supreme court.

Second. The district courts.

Third. The probate courts.

Who to keep seal.

SEC. 511. The clerk of each court shall keep the seal thereof.

Manner of affixing impress of seal.

SEC. 512. The seal may be affixed by impressing it upon the paper, or on a substance attached to the paper and capable of receiving the impression.

Judicial days.

SEC. 513. The courts of justice may be held, and judicial business may be transacted, on any day except as provided in the next section.

Non-judicial days.

SEC. 514. No court shall be opened, nor shall any judicial business be transacted, on Sunday, New Year's day, Fourth of July, Christmas day, Washington's birthday, Thanksgiving day, or on a general election, except for the following purposes:

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First. To give, upon their request, instructions to a jury then deliberating on their verdict.

Second. To receive a verdict or discharge a jury.

Third. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature.

Fourth. When it shall appear, by the affidavit of the plaintiff, or some one in his behalf, in cases for the recovery of specific personal property, that the defendant is about to conceal, dispose of, or remove such property out of the jurisdiction of the court, an order for taking possession of the same may be issued on any day. Exceptions.

Fifth. When an application for a writ of attachment is made, and it shall appear by the affidavit of the plaintiff, or some one in his behalf, that the defendant is about to dispose of, conceal, or remove property subject to execution or attachment, out of the jurisdiction of the court, a writ of attachment may be issued on any day.

When the day fixed for the opening of a court shall fall on any of the days mentioned in this section, the court shall stand adjourned until the next succeeding day. When, on the day appointed for the commencement of any term of the supreme or district court, the judges or judge of such court being not present to hold the same, the clerk of the court shall adjourn such term of court, from day to day, until the expiration of one week from the day appointed for the commencement of the term, noting such adjournment in the minutes each day; and if the judges or judge of such court be not then present to hold such term on the day one week from the time appointed for such term to commence, the clerk shall adjourn the court for the term, and make an entry on the minutes thereof. If the judges or judge shall appear on any day to which the court has been adjourned by the clerk, as above provided, the court shall proceed in the same manner and with the same effect as if the judges or judge had been present and the court had been regularly opened on the day appointed for the term to commence.

Clerk to adjourn court if judge does not appear on first day of term.

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Courts, where held.

SEC. 515. Every court of justice, except a justice's court, shall sit at the county seat of the county in which it it is held, except as may be otherwise provided by law. No justice of the peace shall hold a court in any other county or city than the one for which he shall have been elected.

Actions against sheriff.

Notice to sureties.

SEC. 516. In an action brought against a sheriff for an act done by virtue of his office, if he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be sufficient evidence of his right to recover against such sureties; and the court or judge, in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Register of actions kept by clerk.

SEC. 517. The clerk shall keep among the records of the court a register of actions; he shall enter therein the title of the action, with brief notes under it from time to time of all papers filed and proceedings had therein.

Number of referees, &c., who may act.

SEC. 518. When there are three referees or three arbitrators, all shall meet; but two of them may do any act which might be done by all.

Computation of time under this act.

SEC. 519. The time within which an act is to be done, as provided in this act, shall be computed by excluding the first day and including the last; if the last day be Sunday it shall be excluded. When the act to be done relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the service of notices other than appeal, or the preparation of statement, or of bills of exceptions, or of amendments thereto, the time allowed by this act may be extended, upon good cause shown, by the court in which the action is pending, or the judge thereof, or, in the absence of such judge from the county in which the action is pending, by the probate judge; but such extension shall not exceed thirty days beyond the time prescribed by this act, without the consent of the adverse party.

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When papers without title of action valid.

SEC. 520. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Limitations of actions that arose out of the territory.

SEC. 521. When a cause of action has arisen in another state or territory, or in a foreign country, and by the laws thereof an action thereon cannot be there maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this territory except in favor of a citizen thereof, who has held the cause of action from the time that it accrued.

Words and terms—how used.

SEC. 522. Words used in this act in the present tense shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; and words used to include the masculine gender, shall include the feminine gender; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include mark, when the person cannot or is unable to write, his name being written near it, and witnessed by a person who writes his own name as a witness.

Sureties on undertaking to make affidavit of worth

SEC. 523. In all cases where an undertaking, by the provisions of this act, is required, it shall be the duty of the person taking the same to require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above their just debts, liabilities, and property exempt by law from execution: *Provided*, That when the amount specified in the undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state, in their affidavits, that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

SEC. 524. Whenever property has been taken by an officer, under a writ of attachment, in pursuance of the

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provisions of this act, and it shall be made to appear satisfactorily to the court, or a judge thereof, or a probate judge, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court, to abide the judgment in the action. Such order shall be made only upon notice to the adverse party or his attorney, in case such party has been personally served with summons in the action.

When court may order attached property sold before judgment.

SEC. 525. A copy of any record, or document, or paper, in the custody of a public officer of this territory, or of the United States within this territory, certified under the official seal, or verified by the oath of such officer to be a true, full, and correct copy of the original in his custody, may be read in evidence in an action or proceeding in the courts of this territory, in the like manner, and with the like effect, as the original could be if produced.

Copy of record as evidence.

SEC. 526. The supreme court, the several district courts, and the several probate courts of this territory, shall be courts of record.

Courts of record.

SEC. 527. The sittings of every court of justice shall be public, except as provided in the next section.

Courts to sit in public.

SEC. 528. In an action for divorce, the court may direct the trial of any issue of fact joined therein to be private, and upon such direction all persons may be excluded except the officers of the court, the parties, their witnesses, and counsel.

Trial of issue in divorce may be in private.

SEC. 529. Every court shall have power:

First. To preserve and enforce order in its immediate presence.

Second. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority.

Powers of court to enforce its authority.

Third. To compel obedience to its lawful judgments, orders, and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein.

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Fourth. To control, in furtherance of justice, the conduct of its ministerial officers.

Cases where a judge shall not act as such.

SEC. 530. A judge shall not act as such in any of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity within the third degree; or when he has been attorney or counsel for either party in the action or proceeding.

Judge shall not act as attorney in his own court.

SEC. 531. A judge shall not act as attorney or counsel in a court in which he is a judge, or in an action or proceeding removed therefrom to another court for review, or in any action or proceeding from which an appeal may lie in his own court.

Not to act as attorney in supreme court.

SEC. 532. A judge of the supreme court, or of the district court, shall not act as attorney or counsel in any court, except in an action in which he is a party to the record.

Not to have partner acting as attorney.

SEC. 533. A judge or justice of the peace shall not have a partner acting as attorney or counsel in any court in this territory.

If application for order be refused, no subsequent application entertained.

SEC. 534. If an application for an order, made to a judge of a court in which the action or proceeding is pending, be refused, in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other judge, except of a higher court: *Provided,* That nothing in this section shall be so construed as to apply to motions refused for any informalities in the papers or proceedings necessary to obtain an order.

Violation of last section punished as contempt.

SEC. 535. A violation of the last section may be punished as a contempt, and an order made contrary thereto may be revoked by the judge who made it, or vacated by a judge of a court in which the action or proceeding is pending.

TITLE XII.

CHAPTER I.— *Of the Writ of Certiorori and Mandamus.*

Writ of *certiorari.*

SEC. 536. The writ of *certiorari* may be denominated the writ of review.

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Cases when the writ is granted.

SEC. 537. This writ may be granted, on application, by any court of this territory except a justice's, probate, or mayor's court. The writ shall be granted in all cases when an inferior tribunal, board, or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

Application —how made.

SEC. 538. The application shall be made on affidavit by the party beneficially interested; and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Writ—how directed.

SEC. 539. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified; when directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

What to command.

SEC. 540. The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court; and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

May contain order staying proceedings.

SEC. 541. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ; these words may be inserted or omitted, in the sound discretion of the court, but if omitted, the power of the inferior court or officer shall not be suspended, nor the proceedings stayed.

How served.

SEC. 542. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

How far review upon the writ to extend.

SEC. 543. The review upon this writ shall not be extended further than to determine whether the inferior

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tribunal, board, or officer, has regularly pursued the authority of such tribunal, board, or officer.

SEC. 544. If the return of the writ be defective the court may order a further return to be made. When a full return has been made the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment either affirming or annulling or modifying the proceedings below. Return of the writ.

SEC. 545. A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up. Copy of judgment to the inferior tribunal.

SEC. 546. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the supreme court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action. Judgment roll in such case. Appeal.

CHAPTER II.—*The Writ of Mandate, or Mandamus.*

SEC. 547. The writ of *mandamus* may be denominated the writ of mandate.

SEC. 548. It may be issued by any court in this territory, except a justice's, probate, or mayor's court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person. *Mandamus*—by what authority and for what issued.

SEC. 549. The writ shall be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested. Cases in which it is issued.

SEC. 550. The writ shall be either alternative or peremptory; the alternative writ shall state generally

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the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day shall be inserted.

Writ, either alternative or peremptory.

SEC. 551. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

Where application is made without notice.

SEC. 552. On the return of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

Defendant may show cause.

SEC. 553. If an answer is made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation on which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

When question may be tried by jury.

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SEC. 554. On the trial the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof, either in direct denial or by way of avoidance. Plaintiff not concluded by the answer.

SEC. 555. The motion for a new trial must be made in the court in which the issue of fact is tried. Motion for new trial.

SEC. 556. If no notice of a motion for a new trial be given, or, if given, the motion be denied, the clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party. Verdict—when copy transmitted by clerk.

SEC. 557. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements not affecting the substantial rights of the parties, the court must proceed to hear, or fix a day for hearing, the argument of the case. Hearing of the application.

SEC. 558. If judgment be given for the applicant, he shall recover the damages which he shall have sustained, as found by the jury, or as may be determined by the court, or referees upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay. What judgment for applicant if he recover.

SEC. 559. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of any of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not. Writ—how served.

SEC. 560. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court that any member of such tribunal, corporation, board, or such person Disobedience of writ.

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upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of a persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may make any orders necessary and proper for the complete enforcement of the writ.

Punishment therefor.

CHAPTER III.—*Writ of Prohibition.*

SEC. 561. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person, when such proceedings are without, or in excess of, the jurisdiction of such tribunal, corporation, board, or person.

Writ of prohibition — its offices.

SEC. 562. It may be issued by any court except police or justice's courts, to an inferior tribunal, or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

By what authority issued.

SEC. 563. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

Writ alternative or peremptory.

Form of alternative writ.

Form of peremptory writ.

SEC. 564. The provisions of the preceding chapter, except of the four first sections thereof, apply to this proceeding.

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SEC. 565. Writs of review, mandate, and prohibition, issued by the supreme court, or by the district court, may be made returnable and a hearing thereon be had at any time. When returnable.

TITLE XIII.—OF CONTEMPTS AND THEIR PUNISHMENTS.

SEC. 566. The following acts or omissions, in respect to a court of justice, or proceedings therein, are contempts of the authority of the court: Contempts — what shall be deemed.

First. Disorderly, contemptuous, or insolent behavior towards the judge while holding court, tending to interrupt the due course of a trial or other judicial proceeding.

Second. A breach of peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of the trial or other judicial proceeding.

Third. Misbehavior in office or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service.

Fourth. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.

Fifth. Disobedience of any lawful judgment, order, or process of the court.

Sixth. Assuming to be an officer, attorney, counsel of a court, and acting as such without authority.

Seventh. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

Eighth. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial.

Ninth. Any other unlawful interference with the process or proceedings of a court.

Tenth. Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness.

Eleventh. When summoned as juror in a court, neg-

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lecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

Twelfth. Disobedience by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authortty of such officer.

SEC. 567. Every person dispossessed or ejected from or out of any real property, by the judgment or process of any court of competent jurisdiction, and who, not having the right so to do, re-enters into or upon, or takes possession of, any such real property, or induces or procures any person not having the right so to do, or aids or abets him therein, is guilty of a contempt of the court by which such judgment was rendered, or from which such process issued. Upon a conviction of such contempt the court or justice of the peace must immediately issue an *alias* process, directed to the proper officer, and requiring him to restore the party entitled to the possession of such property, under the original judgment or process, to such possession.

Party dispossessed of real property by order of court retaining without authority guilty of contempt.

SEC. 568. When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily, for which an order shall be made reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts

Contempt — how punished when committed in presence of court.

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constituting the contempt, or a statement of the facts by the referees or arbitrators.

When the contempt is not committed in the immediate view and presence of the court or judge, a warrant or attachment may be issued to bring the person charged to answer; or, without a previous arrest, a warrant of commitment may, upon notice or upon an order to show cause, be granted, and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order to show cause.

Proceeding in case contempt is committed out of presence of court.

Whenever a warrant of attachment is issued pursuant to this chapter, the court or judge shall direct, by an endorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such endorsement.

Bail to be endorsed on warrant.

SEC. 569. Upon executing the warrant of attachment the sheriff shall keep the person in custody, bring him before the court or judge, and detain him until an order may be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Duty or sheriff in executing the warrant.

SEC. 570. When a direction to let a person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he shall be discharged from the arrest upon executing and delivering to the officer, at any time before return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on return of the warrant, and abide the order of the court or judge thereon, or they will pay as may be directed the sum specified in the warrant.

When prisoner released on bail.

SEC. 571. The officer shall return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

Return of writ.

SEC. 572. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Hearing of the charge.

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Of judgment and fine.

SEC. 573. Upon the answer and evidence taken the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed upon him, not exceeding five hundred dollars.

If contempt is act of omission, party imprisoned until act is performed.

SEC. 574. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it, and in that case the act shall be specified in the warrant of commitment.

Proceeding if offense indictable.

SEC. 575. Persons proceeded against according to the provisions of this chapter shall also be liable to indictment for the same misconduct, if it be an indictable offense; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

Proceedings if party fail to appear.

SEC. 576. When the warrant of arrest has been returned served, if the person arrested do not appear on return day the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party, by reason of the misconduct for which the warrant was issued, and the costs of the proceedings.

Illness an excuse for non-appearance.

SEC. 577. Whenever, by the provisions of this chapter, an officer is required to keep a person, arrested on a warrant of attachment, in custody, and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Confinement for contempt.

Judgment and fine for contempt.

SEC. 578. The judgment and order of the court or judge, made in cases of contempt, shall be final and conclusive. The punishment shall be by fine or imprison-

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ment, but no fine shall exceed the sum of five hundred dollars.

TITLE XIV.—Of Eminent Domain.

Right of eminent domain.

SEC. 579. Eminent domain is the right of the people or government to take private property for public use. This right may be exercised in the manner provided in this title.

Uses for which eminent domain may be exercised.

SEC. 580. Subject to the provisions of this title, eminent domain may be exercised in behalf of the following public uses:

First. Public buildings and grounds for the use of the territory, and all other public uses authorized by the legislature of this territory.

Second. Public buildings and grounds for the use of any county, incorporated city, or city and county, village, town, or school districts; canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, incorporated city, or city and county, village, or town; or for draining any county, incorporated city, or city and county, village, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, incorporated city, or city and county, village, or town, or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes by which the same may be authorized.

Third. Wharves, docks, piers, chutes, booms, ferries, bridges, toll-roads, by-roads, plank and turnpike roads, steam and horse railroads; canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating lumber and logs on streams not navigable.

Fourth. Roads, tunnels, ditches, flumes, pipes, and

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dumping places for working mines; also, outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of the tailings or refuse matter from their several mines.

Fifth. By-roads leading to residences and farms.

Sixth. Telegraph lines.

Seventh. Sewerage of any incorporated city, or city and county, or of any village or town, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or to any college or university.

SEC. 581. The following is a classification of the estates and rights in lands subject to be taken for public use:

First. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of *debris* or tailings of a mine.

Estates and rights subject to be taken for public use.

Second. An easement, when taken for any other use.

Third. The right of entry upon, and occupation of, lands, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

SEC. 582. The private property which may be taken under this title includes—

First. All real property belonging to any person.

Private property that can be taken by the exercise of the right of eminent domain.

Second. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

Third. Franchises for toll-roads, toll-bridges, and ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads, or other more necessary use.

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Fourth. All rights of way for any and all the purposes mentioned in section 580, and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed or intersected by, any other right of way or improvements, or structures thereon. They shall also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections, and connections shall be made in manner most compatible with the greatest public benefit and least private injury.

Fifth. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

SEC. 583. Before property can be taken it must appear—

What must appear before private property can be taken.

First. That the use to which it is to be applied is a use authorized by law.

Second. That the taking is necessary to such use.

Third. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

SEC. 584. In all cases where land is required for public use, the territory, or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of section 589. The territory, or its agents in charge of such public use, may enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for injuries resulting from negligence, wantonness, or malice.

Land required for public use may be surveyed.

SEC. 585. All proceedings under this title must be brought in the district court for the county in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

Proceedings under this act must be had in the district court.

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SEC. 586. The complaint must contain —

First. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiffs.

Second. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

Third. A statement of the right of the plaintiff.

The complaint.

Fourth. If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied by surveys and maps thereof.

Fifth. A description of each piece of land sought to be taken, and whether the same includes a whole or only a part of an entire parcel or tract.

Sixth. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff; but the court may consolidate or separate them, to suit the convenience of parties. When application for the condemnation of a right of way for the purpose of sewerage is made on behalf of a settlement, or of an incorporated village or town, the probate judge alone must be named as plaintiff.

SEC. 587. The clerk must issue a summons, which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, and a reference to the complaint for descriptions of the respective parcels, and a notice to the defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars, it must be in the form of a summons in civil actions, and must be served in like manner.

The summons.

SEC. 588. All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his property or interest, or that claimed by him, in like manner as if named in the complaint.

All persons interested may appear and make defense.

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SEC. 589. The court shall have power:

Power of the court under this act.

First. To regulate and determine the place and manner of making connections and crossings; of enjoying the common use mentioned in the fifth sub-division of section 582.

Second. To hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor.

Third. To determine the respective rights of different parties seeking condemnation of the same property.

Legal testimony offered by any party to be heard.

SEC. 590. The court, jury, or referee, must hear such legal testimony as may be offered by any other of the parties to the proceedings, and thereupon must ascertain and assess:

Facts to be ascertained and assessments made.

First. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed.

Second. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

Third. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefitted, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed under sub-division two, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

Fourth. If the property sought to be condemned be

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for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

Fifth. As far as practicable, compensation must be assessed for each source of damage separately.

Measure of damages to be fixed at value of property at time summons issues.

SEC. 591. For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed as provided in section 590.

If an order be made letting the plaintiff into possession, as provided in section 596, the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages.

Plaintiff may institute a second action to perfect his title.

SEC. 592. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this title prescribed.

Plaintiff must within limited time pay assessment of damages or make the necessary improvements.

SEC. 593. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; but may, at the time of or before payment, elect to build the fences and cattle guards, and if he so elect, shall execute to the defendant a bond, with sureties to be approved by the court, in double the assessed costs of the same, to build such fences and cattle guards within eighteen months from the time the railroad is built on the land taken, and if such bond be given, need not pay the costs of such fences and cattle guards. In an action on such bond the plaintiff may recover reasonable attorney's fees.

Of payment to defendants

SEC. 594. Payment may be made to the defendants entitled thereto, or the money may be deposited in

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court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited the defendants may have execution, as in civil cases, and if the money cannot be made on execution, the court, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

If money not paid defendant may have execution as in civil cases.

SEC. 595. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court must make a final order of condemnation, which must describe the property condemned and the purpose of such condemnation. A copy of the order must be filed in the office of the recorder of the county, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

Final order of condemnation.

SEC. 596. At any time after service of summons the court may authorize the plaintiff, if already in possession, to continue therein; and if not, then to take possession of and use the property during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against the plaintiff on account thereof; but the plaintiff must give security, to be approved by such court or judge, to pay as well the compensation in that behalf, when ascertained, as all damages which may be sustained by the defendant, if for any cause the property shall not be finally taken for public use.

Of the possession by plaintiff.

SEC. 597. Costs may be allowed or not, and if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court.

Allowance of costs under this chapter.

TITLE XV.

CHAPTER I. — *General Principles of Evidence.*

SEC. 598. The direct evidence of one witness, who is entitled to full credit, is sufficient for proof of any fact, except perjury and treason.

Sufficiency of evidence.

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Facts to which witness can testify.

SEC. 599. A witness can testify of those facts only which he knows of his own knowledge—that is, which are derived from his own perceptions—except in those few express cases in which his opinions or inferences, or the declarations of others, are admissible.

Witness examined under oath and in presence of all parties.

SEC. 600. A witness can be heard only upon oath or affirmation, and upon a trial he can be heard only in the presence, and subject to the examination, of all the parties, if they choose to attend and examine.

Presumptions in favor of witness.

SEC. 601. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence, and the jury are the exclusive judges of his credibility.

Rights of party not prejudiced by declarations of another party.

SEC. 602. The rights of a party cannot be prejudiced by the declaration, act, or omission of another, except by virtue of a particular relation between them; therefore, proceedings against one cannot affect another.

Admissions of person holding title to real property evidence against his successor in interest.

SEC. 603. Where, however, one derives title to real property from another, the declaration, act, or omission of the latter while holding the title in relation to the property, is evidence against the former.

Res gestæ as evidence.

SEC. 604. Where, also, the declaration, act, or omission forms part of a transaction, which is itself the fact in dispute, or evidence of that fact, such declaration, act, or omission is evidence as part of the transaction.

In dispute between parties over obligation of third party, such obligation is *prima facie* evidence between parties in dispute.

SEC. 605. And where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against such person, is *prima facie* evidence between the parties.

Evidence of declaration of member of a family.

SEC. 606. The declaration, act, or omission of a member of a family, who is a decedent, or out of the jurisdiction, is also admissible as evidence of common reputation, in cases where, on questions of pedigree, such reputation is admissible.

Evidence of a decedent against his interest.

SEC. 607. The declaration, act, or omission of a decedent, having sufficient knowledge of the subject, against

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his pecuniary interest, is also admissible as evidence to that extent against his successor in interest.

SEC. 608. When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing, which is necessary to make it understood, may also be given in evidence.

When part evidence of subject is given in evidence the whole may be inquired into.

SEC. 609. There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases:

First. When the original has been lost or destroyed, in which case proof of the loss or destruction must first be made.

Second. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after a reasonable notice.

Evidence of contents of writing.

Third. When the original is a record or other document in the custody of a public officer.

Fourth. When the original has been recorded and a certified copy of the record is made evidence by this code or other statute.

Fifth. When the original consists of numerous accounts or other documents, which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

In the cases mentioned in sub-divisions three and four, a copy of the original, or of the record, must be produced; in those mentioned in sub-divisions one and two, either a copy or oral evidence of the contents.

SEC. 610. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and, therefore, there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

Construction of a written agreement.

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First. Where a mistake or imperfection of the writing is put in issue by the pleadings.

Second. Where the validity of the agreement is the fact in dispute.

But this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, as defined in section 614; or to explain an extrinsic ambiguity, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties.

Interpretation of a writing.

SEC. 611. The language of a writing is to be interpreted according to the meaning it bears in the place of its execution, unless the parties have reference to a different place.

Office of the judge in construing a statute or instrument.

SEC. 612. In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein — not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

The intention of the legislature and of parties to be pursued, if possible.

SEC. 613. In the construction of a statute, the intention of the legislature, and, in the construction of the instrument, the intention of the parties, is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

Circumstances under which an instrument was executed may be shown.

SEC. 614. For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and of the parties to it, may also be shown, so that the judge be placed in the position of those whose language he is to interpret.

Presumptions in construction of a writing.

SEC. 615. The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is, nevertheless, admissible that they have a local, technical, or otherwise peculiar signification, and

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were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

Evidence to show local or technical signification.

SEC. 616. When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter.

When written to control printed matter.

SEC. 617. When the characters in which an instrument is written are difficult to be deciphered, or the language of the instrument is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language.

When experts admitted to testify.

SEC. 618. When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it; and when different constructions of a provision are otherwise equally proper, that is to be taken which is most favorable to the party in whose favor the provision was made.

As to the intentions of parties to an agreement.

SEC. 619. A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus, a notice to the drawers or endorsers of a bill of exchange or promissory note that it has been protested for want of acceptance or payment, must be held to import that the same has been duly presented for acceptance or payment, and the same refused, and that the holder looks for payment to the person to whom the notice is given.

A writing is to be construed according to the ordinary acceptation of its terms.

SEC. 620. When a statute or instrument is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

Construction where a statute is susceptible of two interpretations.

SEC. 621. None but a material allegation need be proved.

What need be proved.

SEC. 622. Evidence must correspond with the substance of the material allegations, and be relevant to the question in dispute. Collateral questions must therefore be avoided. It is, however, within the discretion of the

Evidence must correspond with pleadings.

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court to permit inquiry into a collateral fact when such fact is directly connected with the question in dispute, and is essential to its proper determination, or when it affects the credibility of a witness.

When collateral facts may be inquired into.

SEC. 623. Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation, except when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded; not even in such case when the allegation is a denial of the existence of a document the custody of which belongs to the opposite party.

Proof each party must make.

SEC. 624. In conformity with the preceding provisions, evidence may be given upon a trial of the following facts:

First. The precise fact in dispute.

Second. The act, declaration, or omission of a party as evidence against such party.

Third. An act or declaration of another, in the presence and within the observation of a party, and his conduct in relation thereto.

Facts that evidence may be given to prove.

Fourth. The act or declaration, verbal or written, of a deceased person in respect to the relationship, birth, marriage, or death of any person related by blood or marriage to such deceased person; the act or declaration of a deceased person done or made against his interest in respect to his real property; and also in criminal actions the act or declaration of a dying person, made under a sense of impending death, respecting the cause of his death.

Fifth. After proof of a partnership or agency, the act or declaration of a partner or agent of the party, within the scope of the partnership or agency, and during its existence. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

Sixth. After proof of a conspiracy, the act or declaration of a conspirator against his co-conspirator, and relating to the conspiracy.

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Seventh. The act, declaration, or omission forming part of a transaction as explained in section 604.

Eighth. The testimony of a witness deceased, or out of the jurisdiction, or unable to testify, given in a former action between the same parties, relating to the same matter.

Ninth. The opinion of a witness respecting the identity or handwriting of a person when he has knowledge of the person or handwriting; his opinion on a question of science, art, or trade, when he is skilled therein.

Tenth. The opinion of a subscribing witness to a writing, the validity of which is in dispute, respecting the mental sanity of the signer, and the opinion of an intimate acquaintance respecting the mental sanity of a person, the reason of the opinion being given.

Eleventh. Common reputation existing previous to the controversy respecting facts of a general or public interest more than thirty years old, and in cases of pedigree and boundary.

Twelfth. Usage, to explain the true character of an act, contract, or instrument, where such true character is not otherwise plain; but usage is never admissible except as an instrument of interpretation.

Thirteenth. Monuments and inscriptions in public places as evidence of common reputation; and entries in family bibles or other family books or charts, engravings on rings, family portraits, and the like, as evidence of pedigree.

Fourteenth. The contents of a writing, when oral evidence thereof is admissible.

Fifteenth. Any facts from which the facts in issue are presumed, or are logically inferable.

Sixteenth. Such facts as served to show the credibility of a witness, as explained in section 601.

SEC. 625. Courts take judicial notice of the following facts:

Facts of which courts take judicial notice.

First. The true signification of all English words and phrases, and all legal expressions.

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Second. Whatever is established by law.

Third. Public and private official acts of the legislative, executive, and judicial departments of this territory, and of the United States.

Fourth. The seals of all the courts of this territory, and of the United States.

Fifth. The accession to office, and the official signatures and seals of office, of the principal officers of government in the legislative, executive, and judicial departments of this territory and the United States.

Sixth. The existence, title, national flag, and seal of every state or sovereign recognized by the executive power of the United States.

Seventh. The seals of courts of admiralty and maritime jurisdiction, and of notaries public.

Eighth. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

In all these cases the court may resort, for its aid, to appropriate books or documents of reference.

CHAPTER II.— *Witnesses.*

SEC. 626. All persons, without exception otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded, nor those who have been convicted of crime, nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witnesses may be drawn in question, as provided in section 601.

Who may be witnesses.

SEC. 627. No person shall be allowed to testify, under provision of the last section, where the adverse party, or the party for whose immediate benefit the action or proceeding is prosecuted or defended, is the representative of a deceased person, when the facts to be proved

Cases in which persons are not allowed to testify under the last section.

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transpired before the death of such deceased person; and nothing in said section shall affect the laws in relation to attestation of any instrument required to be attested; nor shall anything contained in said section render any person, who, in a criminal proceeding, is charged with the commission of any public offense, competent or compellable to give evidence therein for or against himself.

SEC. 628. The following persons shall not be witnesses:

First. Those who are of unsound mind at the time of their production for examination.

Persons who are disqualified as witnesses.

Second. Children under ten years of age, who, in the opinion of the court, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Third. Persons against whom judgment has been rendered upon a conviction for a felony, unless pardoned by the governor, or such judgment has been reversed on appeal.

Cases in which persons are not allowed to testify.

SEC. 629. There are particular relations in which it is the policy of the law to encourage confidence, and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:

First. A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

Communications to an attorney.

Second. An attorney or counsellor shall not, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

Third. A clergyman or priest shall not, without the

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consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

Confessions made to a clergyman.

Fourth. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action, as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

Information given a physician in his professional capacity.

SEC. 630. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Communications made to public officer.

SEC. 631. The judge, himself, or any juror, may be called as a witness by either party; but in such case it shall be in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge or jury.

Judge or juror may be called as witness.

SEC. 632. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him. Any person, a resident of the proper county, may be summoned by any court or judge to appear before such court or judge, to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a subpœna. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be deemed guilty of a contempt, and may be punished accordingly. A person summoned as an interpreter *shall* receive such compensation as the court in its discretion may order, in addition to the fees allowed by law.

When an interpreter shall be used for a witness.

CHAPTER III. — *Means of Production.*

SEC. 633. A subpœna may require not only the attendance of the person to whom it is directed at a particular time and place, to testify as a witness, but may also require him to bring any books, documents, or other things under his control, to be used as evidence. No

Subpœna — what may require.

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person shall be required to attend as a witness before any court, judge, or justice, or any other officer out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

SEC. 634. The subpœna shall be issued as follows:

First. To require attendance before the court, or at the trial of an issue therein, it shall be issued and under the seal of the court before which the attendance is required, or in which the issue is pending.

Second. To require attendance out of the court before a judge or justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this territory, it shall be issued by the judge, justice, or any other officer before whom the attendance is required.

Third. To require attendance before a commissioner appointed to take testimony by a court of a foreign country or of the United States, or of any other state in the United States of America, or any other district or county within the territory, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within their respective jurisdiction, with like power to enforce attendance, and upon certificate of contumacy to said court to punish contempt of their process, as such judge or justice could exercise if the subpœna directed the attendance of the witness before their courts in a matter pending therein. Issuance of subpœna.

SEC. 635. The service of a subpœna shall be made by showing the original, and delivering a copy or a ticket containing its substance to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated and one day's attendance there. Such service may be made by any person. Service of subpœna.

SEC. 636. If a witness be concealed in a building or vessel so as to prevent the service of a subpœna upon him,

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any court or judge, or any officer issuing the subpœna, may, upon proof by affidavit, of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpœna, and the sheriff shall serve it accordingly; and for that purpose may break into the building or vessel where the witness is concealed.

Manner of procuring service upon a concealed witness.

SEC. 637. A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

Person present in court may be required to testify.

SEC. 638. It shall be the duty of a witness duly served with a subpœna to attend at the time appointed with any papers under his control required by the subpœna, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed.

Duty of witness when subpœnaed.

SEC. 639. A witness shall answer questions, legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for felony; nor need he give an answer that will have a direct tendency to degrade his character, unless it be the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness shall answer as to the fact of his previous conviction for felony.

Duty of witness on witness stand.

SEC. 640. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit, or deposition, when required, may be punished as a contempt by the court or officer issuing the subpœna, or requiring the witness to be sworn; and, if the witness be a party, his complaint may be dismissed or his answer stricken out.

Punishment of witness for contempt.

SEC. 641. A witness disobeying a subpœna shall also forfeit to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend; which forfeiture and damages may be recovered in a civil action.

Liability of witness to party injured.

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SEC. 642. In case of failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness, and bring him before the court or officer where his attendance was required.

Warrant for arrest of witness.

SEC. 643. Every warrant of commitment, issued by a court or officer pursuant to this chapter, must specify therein particularly the cause of the commitment, and, if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest, or commit, a witness pursuant to this chapter, must be directed to the sheriff of the county where the witness may be, and must be executed by him in the same manner as process issued by the district court.

Warrant of commitment—what shall specify.

How directed and executed.

SEC. 644. If the witness be a prisoner confined in a jail or prison within this territory for any other cause than a sentence for felony, an order for his examination in the prison, upon deposition, or for his temporary removal and production before a court, or officer, for the purpose of being orally examined, may be made as follows:

Order for examination of witness if a prisoner.

First. By the court itself, in which the action or special proceeding is pending.

Second. By a judge of the supreme court, district court, or probate judge of the county where the action or proceeding is pending, if before a judge or other person out of court.

SEC. 645. Such order can only be made on affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

Affidavit for order under last section.

SEC. 646. If the witness be imprisoned in the county where the action or proceeding is pending, for a cause other than felony, his production may be required. In all other cases his examination, when allowed, shall be taken upon deposition.

When witness may be produced if imprisoned.

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CHAPTER III.—*Of the Examination of Parties to an Action or Proceeding, and of Persons for whose Immediate Benefit such Action or Proceeding is Prosecuted or Defended.*

Action to obtain discovery of evidence.

SEC. 647. No action to obtain a discovery under oath, in aid of the prosecution or defense of another action or proceeding, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner provided by this and the foregoing chapter.

Examination of adverse party.

SEC. 648. A party to an action or proceeding may be examined as a witness at the instance of the adverse party, or of any one of several adverse parties; and for that purpose may be compelled, in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, and he may be examined on a commission.

Rebuttal of testimony taken under last section.

SEC. 649. The examination of a party thus taken may be rebutted by adverse testimony.

Remedy in case adverse party refuse to testify.

SEC. 650. If an adverse party refuse to attend or testify at the trial, or to give his deposition before trial, or upon a commission when required, his complaint or answer may be stricken out, and judgment be taken against him; and he may be also, in the discretion of the court, proceeded against as in other cases for contempt.

CHAPTER IV.—*On Affidavit.*

Affidavit, before whom taken in territory.

SEC. 651. An affidavit, to be used before any court judge, or officer of this territory, may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this territory.

Before whom taken out of territory.

SEC. 652. An affidavit taken in another territory, or any state of the United States, to be used in this territory, shall be taken before a commissioner appointed by the governor of this territory to take affidavits and depositions in such other territory or state, or before any notary public or judge of a court of record having a seal.

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SEC. 653. An affidavit taken in a foreign country, to be used in this territory, shall be taken before an ambassador, minister, or consul of the United States, or before any judge of a court of record, having a seal, in such foreign country. Before whom taken in foreign country.

SEC. 654. When an affidavit is taken before a judge of a court in another state, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, shall be certified by the clerk of the court under the seal thereof. If taken before judge out of territory, his signature to be authenticated.

SEC. 655. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or the clerk thereof. If not so made, it may be filed with the clerk of the county where the newspaper is printed. In either case the original affidavit, or a copy thereof, certified by the judge of the court or clerk having it in custody, is *prima facie* evidence of the fact stated therein. Where affidavit to be filed. Is *prima facie* evidence.

CHAPTER V.— *Of Depositions taken in this Territory.*

SEC. 656. The testimony of a witness in this territory may be taken by deposition in an action at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding after a question of fact has arisen therein, in the following cases: Deposition of witness within the territory.

First. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended.

Second. When the witness resides out of the county in which his testimony is to be used. Cases when can be taken.

Third. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required.

Fourth. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

SEC. 657. Either party may have the deposition taken of a witness in this territory, before any judge or

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Either party may have taken.

clerk, or any justice of the peace, or notary public, in this territory, on serving on the adverse party previous notice of the time and place of examination, together with a copy of an affidavit showing that the case is one mentioned in the last section. At any time during the forty days immediately after the service of summons by publication has been completed, and at any time thereafter when the defendant has not appeared, the notice required by this section may be served on the clerk of the court where the action is pending; such notice shall be at least five days, and in addition one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless, for a cause shown, a judge by order prescribe a shorter time. When a shorter time is prescribed a copy of the order shall be served with the notice.

Notice for and time governing.

SEC. 658. Either party may attend such examination, and put such questions—direct and cross—as may be proper. The deposition, when completed, shall be carefully read to the witness, and corrected by him in any particular if desired; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, enclosed in an envelope or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk, or such person, or transmitted through the mail, or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend, proof, by

Manner of taking and returning deposition.

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affidavit or oral testimony, shall be made at the trial that the witness continues absent or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may also be read in case of the death of the witness.

May be read as evidence by either party.

SEC. 659. When a deposition has once been taken it may be read in any stage of the same action or proceeding by either party, and shall then be deemed evidence of the party reading it.

CHAPTER VI.— *Of Depositions taken out of this Territory.*

When deposition of witness out of territory may be taken.

SEC. 660. The testimony of a witness out of the territory may be taken by deposition in an action, at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding, at any time after a question of fact has arisen therein.

Deposition of non-resident witness, how taken.

SEC. 661. When the testimony of any non-resident witness or witnesses shall be necessary in any civil cause, depending in any court of law or equity in this territory, it shall be lawful for the party wishing to use the same, on giving to the adverse party, or his attorney, five days previous notice, together with a copy of the interrogatories intended to be put to such witness or witnesses, to sue out from the proper clerk's office a commission, under the seal of the court, to be directed to any person as commissioner, or to any judge or justice of the peace, clerk of a court of record, or notary public of the county or city in which such witness or witnesses may reside, authorizing and requiring him to cause such witness or witnesses to come before him, at such place and time as he may designate and appoint, and faithfully to take his, her, or their deposition, or depositions, upon all such interrogations as may be enclosed with, or attached to, such communication, both on the part of the plaintiff and the defendant, and none others; and to certify the same when taken, together with the said commission and interrogations, into the court in which such cause may be

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depending, with the least possible delay. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States, in such country; or to any person agreed upon by the parties.

May be read in evidence on trial.

SEC. 662. Every examination and deposition which shall be taken and returned according to the provisions of this act, may be read in evidence in the cause in which it shall be taken, with the like effect as if such witness had been present, and examined by parol in open court, on the trial or hearing thereof.

May be read by either party on trial.

SEC. 663. All depositions taken in pursuance hereof, when returned into court, may be read by either party, on the trial of the cases to which they relate.

CHAPTER VII.—*Proceedings to Perpetuate Testimony.*

Perpetuation of testimony.

SEC. 664. The testimony of a witness may be taken and perpetuated, as provided in this chapter.

SEC. 665. The applicant must produce to a district or a probate judge, a petition, verified by the oath of the applicant, stating:

First. That the applicant expects to be a party to an action in a court in this territory, and in such case the names of the persons whom he expects will be adverse parties; or,

Procedure to perpetuate testimony.

Second. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and,

Third. The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved.

The judge to whom such petition is presented must make an order allowing the examination, and designating the officer before whom the same must be taken, and

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prescribing the notice to be given, which notice, if the parties expectant are known, and reside in this territory, must be personally served; and, if unknown, such notice must be served on the clerk of the county where the property to be affected by the evidence is situated, or the judge making the order resides, as may be directed by him, and by publication thereof in some newspaper, to be designated by the judge, for the same period required for the publication of summons. The judge must also designate in his order the clerk of the county to whom the depositions must be returned when taken.

SEC. 666. The person appointed by the judge to take the depositions is authorized, if a resident of this territory, on receiving a copy of the order of the judge, and of the notice prescribed in the last section, with proof of its personal service or publication, or if a resident without the territory, on receiving the commission mentioned in the next section, with proof of like service of publication of the notice, to take the deposition of the witness named in the order of the judge or in the commission; or, if more than one witness is thus named, of such of them as appear before him at the time designated; and the taking of the same may be continued from time to time.

Authority of person appointed to take evidence to perpetuate testimony.

SEC. 667. The examination must be by question and answer, and if the testimony is to be taken outside of this territory, it must be taken upon a commission to be issued by the judge allowing the examination, under the seal of the court of which he is judge, and upon interrogatories to be settled by the judge granting such commission, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper, for such time as the judge may designate. The deposition, when completed, must be carefully read to and subscribed by the witness, then certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to

Mode of examination, and authority to examine.

Return of deposition.

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the clerk of the county designated in the order of the judge allowing the examination, who shall file the same when received. The judge allowing the examination shall file with the clerk the order for the examination, the petition on which the same was granted, with proof of service of the order and notice.

Papers in the proceeding deemed *prima facie* evidence.

SEC. 668. The petition and order and papers filed by the judge, as provided in section 665, or a certified copy thereof, are *prima facie* evidence of the facts stated therein to show compliance with the provisions of this chapter.

When deposition or copies may be used on trial.

SEC. 669. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties, wherein it may be material to establish the facts which depositions prove, or tend to prove, upon proof of the death or insanity of the witnesses, or that they cannot be found, or are unable, by reason of age or other infirmity, to give their testimony, the depositions or copies thereof may be used by either party, subject to all legal objections; but if the parties attended at the examination, no objection to the form of an interrogatory can be made at the trial, unless the same was stated at the examination.

Effect of deposition.

SEC. 670. The deposition so taken and read in evidence has the same effect as the oral testimony of the witness, and no other, and every objection to the witness, or to the relevancy of any question put to him, or of any answer given by him, may be made in the same manner as if he were examined orally at the trial.

CHAPTER VIII.—*Administration of Oaths and Affirmations.*

Who may administer oaths.

SEC. 671. Every court of this territory, every judge or clerk or deputy clerk of any court, every justice of the peace, and every notary public, county clerk, and every officer authorized to take testimony, or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations.

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SEC. 672. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Oath of a person not a Christian.

SEC. 673. A witness who desires it may, at his option, instead of taking an oath, make his solemn affirmation or declaration by assenting when addressed in the following form:

"You do solemnly affirm that the evidence you shall give in this issue (or matter) pending between ——— and ——— shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by answer, "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

Form of affirmation.

SEC. 674. That Chapters XLI. and LXXX. of an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana territory," approved January 12th, 1872, relating to limitations, and the first six hundred and fifteen sections of an act entitled "An Act to regulate proceedings in civil cases in the courts of justice of the territory of Montana," approved January 12th, 1872, be, and the same is hereby, repealed: *Provided*, That this act shall not be so construed as to affect any suit or proceeding that may be pending in any court of this territory at the time this act shall take effect.

Acts and parts of acts repealed.

Act not to affect pending actions.

SEC. 675. This act shall take effect and be in force on and after the first day of August, one thousand eight hundred and seventy-seven; except Chapter II. of Title XV., and III. of Title VIII., and section 84 of Chapter II. of Title VI., and section 241 of Chapter III. of Title VIII., which shall take effect and be in force from and after its passage.

When act to take effect.

Exceptions.

Approved February 16th, 1877.

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COMMISSIONERS OF DEEDS.

AN ACT to provide for the appointment of commissioners of deeds.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Appointment of commissioner of deeds.

SECTION 1. That the governor of this territory may appoint and commission in any state or territory of the United States, or Dominion of Canada, one or more commissioners of deeds, to continue in office during the pleasure of the govenor, not exceeding the period of five years, who shall have power to administer oaths and take depositions, and the proof and acknowledgment of deeds, and other instruments, to be used or recorded in this territory.

Term of office.

Powers.

Oath of commissioner.

SEC. 2. Before such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath before some officer authorized to administer oaths in the state or territory for which he is appointed, that he will faithfully discharge the duties of his said appointment, which oath, together with an impression of his seal of office, shall be filed in the office of the governor of this territory: *Provided,* That no commission shall issue until the applicant pays into the territorial treasury the sum of three dollars.

Fee for appointment.

Act repealed.

SEC. 3. That Chapter XII. of an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana territory," approved January 12th, 1872, be, and the same is hereby, repealed; but nothing in this act contained shall be so construed as to terminate the office of any commissioner of deeds heretofore appointed by the governor of this territory, before January 1st, 1878, nor until five years shall have expired after the date of his commission.

Proviso.

SEC. 4. This act shall take effect and be in force from and after its passage, and all acts in conflict with this act are hereby repealed.

Approved January 26th, 1877.

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CONSOLIDATION OF OFFICES.

AN ACT to consolidate the county offices of Meagher, Choteau, Jefferson, Gallatin, and Missoula counties.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. The sheriffs of the counties of Meagher, Choteau, Jefferson, Gallatin, and Missoula, shall be *ex officio* the assessors of said counties, and shall peform the duties now required by law to be performed by assessors, and shall, before proceeding to assess any property, take and subscribe the oath of office now required to be taken by assessors; and, in addition to his fees as sheriff, shall be entitled to receive not less than one-half nor more than three-fourths of one mill on the assessed value of all property returned by him, subject to all deductions made by the board of equalization: *Provided*, That the provisions of this bill shall apply to Gallatin county save and except as to the offices of probate judge and county clerk, which offices shall not in any case be consolidated in the said county of Gallatin.

Consolidation of certain offices in Meagher, Choteau, Jefferson, Gallatin, and Missoula counties.

SEC. 2. That the probate judges of said several counties shall by virtue of their said offices be *ex officio* county clerk and recorder, and, in addition to the duties of said office of probate judge, shall perform the duties of county clerk and recorder, as prescribed by law, and shall, in addition to their fees as probate judge, receive the same fees as are by law allowed to said clerks and recorders for the services as such clerks and recorders; and before entering upon the discharge of their duties, they shall, in addition to their bonds as probate judge, execute the same bond as is now required by law of said clerk and recorder, and take the same oath of office as is now required of such clerk and recorder: *Provided*, That no compensation shall be allowed the probate judge, except the said fees now prescribed by law for the performance of the duties of probate judge and clerk and recorder.

Duties and fees of officers where office is consolidated.

SEC. 3. The county treasurers of said counties shall

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be *ex officio* superintendents of common schools of said counties, and shall perform the duties of such superintendents without other compensation than that allowed by law to county treasurers.

Officer refusing to discharge duties, office deemed vacant.

SEC. 4. The refusal of any officer to act as assessor, or as county clerk and recorder, or as superintendent of common schools, shall vacate the office of the sheriff, or probate judge, or treasurer, so refusing to act, which shall be filled as in other cases of vacancy.

Election of officers.

SEC. 5. At the next general election to be held in said several counties, there shall be elected a sheriff, who shall be *ex officio* assessor; a probate judge, who shall be *ex officio* county clerk and recorder; and a treasurer, who shall be *ex officio* superintendent of common schools, of said counties, respectively, who shall enter upon the duties of their respective offices as provided for in this act at the time or times now prescribed by law.

Act not to affect tenure of officers now in office.

SEC. 6. This act shall not affect the tenure of office of any officer now holding the office of county assessor, county clerk and recorder, or superintendent of schools, nor with their discharge of the duties thereof, but they may proceed to discharge said duties and hold their said offices to the close of the terms for which they have been elected or appointed, but otherwise this act shall take effect from and after its passage.

Approved February 16th, 1877.

COUNTY COMMISSIONERS—ELECTION OF.

AN ACT to regulate the election of county commissioners.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. At the general election to be held on the 7th day of November, A. D. 1878, there shall be elected a board of county commissioners composed of three members. The person having the highest number of votes shall continue in office for six years; the next

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highest, four years; the next highest, two years; and biennially thereafter one commissioner shall be elected and continue in office six years: *Provided*, That county commissioners whose term of office shall expire in 1877, shall continue in office until their successors are elected and qualified. On every election hereafter of county commissioners of any county, where more than one commissioner is to be elected, the person receiving the highest number of votes shall be held and considered elected for the longest term of office to be filled at such elections; the person receiving the second highest number of votes shall be held and considered elected for the second longest term of office; and the person receiving the third largest number, for the shortest term; but if two or more persons have the same number of votes, then their terms shall be determined by lot, under the direction of the board of canvassers returning the election.

Election and term of service of county commissioners.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 15th, 1877.

COUNTY SICK AND POOR.

AN ACT supplemental to an act to provide for the support, care, and maintenance of the county sick and poor.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That nothing contained in sections 5, 6, or 7, of an act entitled "An Act to provide for the support, care, and maintenance of the county sick and poor," shall be so construed as to prevent the county commissioners of the several counties of this territory from rejecting any or all bids which they may receive under the provisions of said sections: *Provided*, When any con-

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tract shall be let for the maintenance of such sick and poor it shall be let to the lowest responsible bidder.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved January 26th, 1877.

CRIMINAL LAWS.

AN ACT to amend section 147 of the criminal laws, approved January 12th, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. Section 147 shall read as follows: "SECTION 147. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley, of any city, town, or village, or any public bridge, or causeway, mill-race, mill-dam, or ditch, or public river, or stream, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall in any wise pollute or obstruct any water-course, water-ditch, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, city, village, or neighborhood thereabouts; or shall erect or maintain any other thing which would be a nuisance at common law, every person so offending shall, upon conviction, be fined not more than one thousand dollars. And every such nuisance may, by order of the court before whom the conviction may take place, be removed and abated by the sheriff of the county."

Obstruction of highways, streets, alleys, ditches, rivers, &c.

Penalty for violating this act.

SEC. 2. Section 147 of criminal laws, approved January 12th, 1872, is hereby repealed.

Approved February 8th, 1877.

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DAMS AND RESERVOIRS.

AN ACT to protect persons and property.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. No person shall hereafter fill or procure to be filled with water any dam or reservoir which is not so thoroughly and substantially constructed as that it will safely and securely hold the waters so to be turned therein, if upon the stream upon which said dam or reservoir is situate, and below the same, there are persons living whose lives are or may be endangered by the breaking of such dam or reservoir, or if upon said stream there is valuable property which may be damaged or destroyed by the breaking of such dam or reservoir and the escape of the waters therefrom.

Dams and reservoirs not to be filled with water so as to endanger life or property.

SEC. 2. No person shall hereafter construct or cause to be constructed on such stream any dam or reservoir to accumulate the waters thereof, except in a thorough, secure, and substantial manner.

Manner in which dams or reservoirs shall be constructed.

SEC. 3. Upon complaint made on oath before any probate judge of any county in this territory, that any person or persons are filling, or are proposing or threatening to fill, such dam or reservoir as is mentioned in section 1 of this act, or have filled or gathered water in such reservoir or dam, and that life or property is or will be thereby endangered, it shall be the duty of such probate judge forthwith to appoint three discreet and proper persons of the county in which such dam or reservoir may be situate, competent to serve as jurors in such county, one of whom, if practicable, shall be a mining or civil engineer, and to administer to each of them an oath that he will diligently proceed to and thoroughly examine the said dam or reservoir, and determine as to its security, to the best of his ability, without fear or favor, and whether life or property is or will be endangered thereby by the breaking thereof and the escape of waters therefrom.

Complaint under section 1 of this act.

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SEC. 4. Upon taking and subscribing said oath, it shall be the duty of such persons to proceed together to such stream, dam, or reservoir, and to make a thorough examination thereof, and if upon such examination the said persons shall find that along said stream there are persons residing whose lives may be endangered, or that there is property thereon below said dam or reservoir which may be endangered, damaged, or destroyed, they shall determine whether the said dam or reservoir is or is not secure against the pressure of the water confined therein, or the water proposed to be confined therein, and also secure against rains and freshets which may occur, and if they find that the same is secure against the occurrence of the casualities mentioned, or any of them, they shall make a verdict in writing to that effect, over their hands, to the probate judge who appoints them, which he shall enter of record as a proceeding in his court.

Inspectors to examine dam or reservoir.

SEC. 5. If, upon such examination as to the safety of such reservoir, they, or a majority of them, shall deem such reservoir insufficient and insecure, they shall further inquire whether the danger to be apprehended is imminent or no, and if they, or a majority of them, shall be of the opinion that such danger is imminent, and that destruction of life or property will result from delay, it shall be their duty forthwith, in such manner as to them shall seem best, to draw from such reservoirs the waters therein, or so much thereof as will insure the safety of all persons and property below the same on the line of said stream, and they shall make return of their action to such probate judge; and in the discharge of such duties the persons so acting shall be deemed peace officers of the territory, engaged, upon their discretion, in the lawful protection of life and property, and in preventing apprehended violence thereto.

Duty of examiners when dam or reservoir considered dangerous to life or property.

SEC. 6. If, upon such examination, they, or a majority of them, shall deem such dam or reservoir insecure and insufficient, but that the danger therefrom is not

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immediate or imminent, they shall so state in writing to such probate judge, who shall thereupon cause a copy of said finding of said persons to be served on the owner or owners, or person or persons in charge thereof, with a notice requiring him or them to proceed forthwith to make the same secure, or to draw the water therefrom without delay; and unless such person or persons shall comply with such notice in the shortest practicable time, or unless the said person or persons, upon a hearing before said probate judge, upon notice to the complainant thereof, shall show that the said dam or reservoir is secure, or that no property or life would be endangered by its giving way, it shall be the duty of said probate judge to issue his writ commanding the sheriff to draw from said dam or reservoir the waters thereof.

When owner to make dam or reservoir secure.

Owner may show that same is secure

SEC. 7. Upon such trial it shall be the duty of the probate judge to prepare a list from among the persons of the county competent to serve as jurors, of the names of twelve persons, who, in his judgment, are best qualified to judge of the sufficiency of any dam or reservoir, who may be interrogated as to causes of challenge for cause by any person interested, and if any shall not be indifferent as between the parties, or other cause of challenge for cause shall exist, and said person shall be challenged, the probate judge shall excuse him and summon others until twelve discreet persons remain against whom no challenge for cause exists, and the complainant and others, if any prosecuting with him, as prosecutors, and the owner, or persons complained of, or in charge of, or owning said dam or reservoir, as defendants, shall alternately strike from said list until it is reduced to six, who shall compose the jury to try the issue or issues named in section 5 of this act, or the parties aforesaid, if they can agree, may select the jury therefor.

Proceeding to procure jury to try question as to whether dam or reservoir is secure.

SEC. 8. The person or persons, corporation or company, owning or using said reservoir or dam and the waters therein, may appeal from any decision of the probate judge and the verdict of the persons appointed by

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such probate judge, to the district court, as appeals are taken in other cases, upon giving to any person or persons owning property on said stream below said dam or reservoir which may be destroyed by the bursting thereof, and who shall have appeared and claimed such security in such sum or sums as the probate judge may determine, security against loss or damage resulting from the bursting of said dam or reservoir, which said appeal shall be tried by a jury, who may hear testimony as to the questions involved, and shall also personally inspect the dam, reservoir, or stream, and such appeal shall stay all proceedings as to said dam or reservoir, and the waters therein, except when it shall appear that the danger therefrom is imminent, as aforesaid, in which case it shall be the duty of the said probate judge, while the court over which he presides has jurisdiction in the case, and of the judge of the district court after the case is appealed to that court, by proper writs of prohibition, mandamus, or assistance, to be issued provisionally, to protect life and property against any threatened assault upon either, by the careless or insecure accumulation of waters by any person or persons whomsoever, in the manner aforesaid; and if any person or persons shall resist any officer in the execution of any writ so issued by the said probate judge, or justice of the district court, or shall fail to assist such officer in the execution of such writ, when thereto requested by him, the person or persons being thereof convicted shall be punished as for resisting an officer, as now provided by law.

Party owning dam or reservoir may appeal from decision of probate judge to district court

Trial on appeal.

Penalty for resisting an officer under this act.

SEC. 9. The persons named in sections 3 and 7 of this act, serving as jurors, shall be entitled to all their necessary expenses of transportation, and mileage and per diem of jurors, as provided by law; and if it shall be finally determined that no cause existed for the complaint, the complainant shall pay the costs thereof; and in the first instance, such complainant shall advance the necessary expenses of such jurors and their fees, but if the said complaint is true, the person or persons, corporation or

Compensation of jurors under this act.

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company, owning, using, or proposing to use said dam or reservoir, shall pay the same, and judgment shall be rendered accordingly, in which case the same shall be a lien upon the said reservoir, and the ditches leading thereto and therefrom, and the waters thereof.

SEC. 10. That when hereafter any person, company, or corporation, engaged in constructing any dam or reservoir for the accumulation of water, shall be complained of by any person or persons whose life or property may be endangered by the breaking thereof, that the same is insecure, insufficient, and dangerous, it shall be the duty of the probate judge to appoint three experts, under whose supervision the same shall be thereafter constructed, nor shall the same be filled with water until the owner or owners thereof shall have filed in the office of the clerk of the probate court a certificate, signed by said experts, that the same is so built that no danger need to be apprehended therefrom; and whenever any such complaint shall be made of any reservoir heretofore built of like purport, it shall be the duty of the probate judge to proceed as in this section is provided, and jurisdiction is hereby conferred upon said court to protect, by proper orders made in proceedings therefor, all persons, towns, and communities, against dangers resulting from insecure reservoirs.

When appointment of experts to superintend construction of dam or reservoir to be made.

SEC. 11. Any person, persons, or company guilty of filling, erecting, constructing, or maintaining a dam or reservoir which is so filled, erected, constructed, or maintained as to endanger life or property in the manner heretofore in this act provided, shall be deemed guilty of erecting, constructing, filling, or maintaining a nuisance, and being thereof convicted, shall be punished as provided by law.

Penalty for erecting or maintaining dam or reservoir so as to endanger life or property.

Approved February 16th, 1877.

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DITCHES AND FLUMES.

AN ACT to compel owners of ditches or flumes to keep the same in repair.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Ditches and flumes to be kept in repair

SECTION 1. The owners of all ditches or flumes shall keep the same in such repair so that the water therein shall not overrun the sides thereof and run into and upon any public highway in the territory of Montana.

Penalty if the owner of ditch or flume allow same to overflow public highway.

SEC. 2. Should the water of any ditch or flume at any time overflow its banks, and run into or upon any public highway by reason of the negligence of the owner, the owner thereof shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than fifty dollars nor more than one hundred dollars.

Duty of road supervisors under this act

SEC. 3. It is hereby made the duty of all road supervisors, in their respective districts, to prosecute all persons violating the provisions of this act, and any such supervisor failing to perform the duty herein required of him shall be subject to a fine of not less than twenty dollars nor more than fifty dollars.

SEC. 4. This act shall be in force from and after its passage.

Approved February 1st, 1877.

ELECTIONS.

AN ACT concerning elections.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Canvass of votes cast in county.

SECTION 1. That section 27 of an act entitled "An Act to provide for biennial elections in the territory of Montana," approved February 11th, 1876, be and the same is hereby amended to read as follows: "SECTION 27. After the fifteenth day after the close of any elec-

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tion held under the provisions of this act, or sooner if all the returns shall be received, the chairman of the board of county commissioners, or in his absence any other member of the board, shall, taking to his assistance the probate judge or a justice of the peace, and one other officer of the county, or any county officer, proceed to open the returns and make abstracts of the votes. Such abstracts of votes for delegate to congress shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on another sheet; and the abstracts of votes for territorial and district officers shall be on another sheet; and the abstracts of votes for county and township officers shall be on another sheet. And it shall be the duty of the clerk of said board of county commissioners immediately to make up a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and township officers, respectively, and to deliver such certificates to the persons entitled to them by mailing the same in 'registered' letters to the address of such persons respectively: *Provided,* That when a tie vote shall exist between two or more persons for any district or county office, the clerk of the board of county commissioners shall immediately give notice of another election, giving at least ten days notice. And it shall be the duty of the clerk of the board of county commissioners of such county, on receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of the election shall be entitled for their services, and lay the same before the county commissioners at their next session, and the board of county commisoners shall order the compensation aforesaid to be paid out of the county treasury."

Manner in which abstracts of votes to be made.

Certificates of election.

Duty of clerk in case of a tie.

Certificate of compensation due election officers.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 15th, 1877.

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ELECTIONS — BIENNIAL.

AN ACT to amend section 31 of an act to provide for biennial elections in the territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Canvass of votes for district officers.

SECTION 1. Where two or more counties are united in a council or representative district, or for the election of any other officer, the canvassing boards of the counties interested shall canvass the vote of said joint officer or officers the same as for other county officers.

Clerk of county last established to forward certified abstracts to senior county.

SEC. 2. It shall be the duty of the county clerk of the board of county commissioners of the county or counties last established to make certified abstracts of the canvass, and immediately forward a copy of said abstract or abstracts by mail, as registered package, to clerk of senior county, and the clerk and probate judge, or any other county officer, including the clerk, shall at once canvass said votes, and the clerk of the senior county shall at once issue certificates of election to the person or persons having the highest number of votes entitled thereto.

Which deemed senior county.

SEC. 3. And for the purpose of this act the county first created shall be deemed the senior county, and when all the counties were created by the same act, the first named therein shall be deemed the senior county.

Sections repealed.

SEC. 4. That section 31 and so much of section 32 of an act to provide for biennial elections, approved February 11, 1876, as refers to mileage to be paid to the clerk of the board of county commissioners for attending at another county to canvass votes, be and the same is hereby repealed.

Approved February 3d, 1877.

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FIRES—PUBLIC BUILDINGS.

AN ACT to provide against accidents in case of fire.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That all buildings hereafter erected to accommodate public assemblies, including churches, schools, concert halls, court houses, theatres, ballrooms, and other buildings which are now or hereafter intended to be used as places of public assemblies of any kind or character, in the territory of Montana, shall be constructed with a view of securing an escape in the event of a fire or alarm of fire, and all such buildings hereafter erected shall have the openings for ingress or egress furnished with doors which, in all cases, shall be so hung on hinges as that they shall open outwardly from the rooms in and from the main building itself.

Regulations as to doors of public buildings hereafter constructed.

SEC. 2. All such buildings now erected that are not constructed as provided in section 1, shall, within one year after the passage of this act, be so altered as to comply with its provisions.

Doors of public buildings heretofore constructed to be altered.

SEC. 3. All persons constructing, owning, controlling, or in custody of any building, which shall be hereafter erected, and which is mentioned in section 1 of this act, and not constructed in accordance with the provisions thereof, shall be deemed guilty of a misdemeanor, and, upon conviction in a court of competent jurisdiction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred; and such building or buildings shall be closed by the court until the doors thereof shall be made to conform to the provisions of this act.

Penalty for violating sec. 1 of this act.

SEC. 4. That all persons owning, controlling, or in custody of any building in this territory, described in section 1 of this act, who shall fail to comply with the provisions of section 2 of this act, shall be guilty of a misdemeanor, and on conviction thereof in any court of competent jurisdiction shall be punished by a fine of not

Penalty for failure to comply with sec. 2 of this act.

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more than fifty dollars, and such building shall be closed by the court until the doors thereof shall be made to conform to the provisions of this act.

Approved February 16th, 1877.

GAMBLING HOUSES.

AN ACT to prohibit persons keeping gaming houses from permitting minors to gamble therein.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Keeper of gaming house not to allow minors to gamble therein.

SECTION 1. Any person or persons keeping a gaming house or other house within the territory of Montana, are hereby prohibited from permitting any minor, or person under the age of twenty-one years, from playing at any game of cards or chance within such house, for money, or any valuable thing.

Penalty for allowing minors to gamble in gaming or other house.

SEC. 2. Any person or persons keeping a gaming house or other house within the territory of Montana, who shall hereafter permit any person under the age of twenty-one years to play at faro, or any other game of chance, with cards or dice, or other implement of gaming, within such house, for money, or any other valuable thing, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of twenty-five dollars for the first offense, and fifty dollars for every additional offense.

SEC. 3. This act to take effect and be in force from and after its passage.

Approved February 16th, 1877.

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GAME.

AN ACT to amend section 4 of an act entitled "An Act to protect fur-bearing animals and fish in the territory of Montana."

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That sections 4 and 8 of said act be and the same are hereby amended so as to read as follows:

SEC. 2. That any person or persons who shall wilfully shoot, or otherwise kill, or cause to be killed, any grouse, prairie-chicken, pheasant, fool-hen, partridge, or quail, between the first day of March and the first day of August of each year, or shall hunt, or chase with dogs, any elk, deer, antelope, or mountain sheep, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than two hundred and fifty dollars, for each offense committed; and all persons are hereby prohibited, at all times, from killing any of the birds described in this section for speculative purposes, or for market or for sale, and any person or persons who shall hereafter kill any of the character of birds in this section hereinbefore mentioned, for speculative purposes, for market, or for sale, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than one hundred dollars.

Killing of game unlawful during certain months of each year.

Unlawful to kill game birds for market or sale.

Penalty.

SEC. 3. That a fishing-tackle, consisting of a rod or pole, line, and hook, or spear, shall be the *only* lawful way that fish can be taken in any of the streams of this territory. It shall, however, be lawful to use a seine in the Missouri and Jefferson rivers, and in the Beaverhead up to Beaverhead rock, and in North Boulder creek twenty-five miles above its mouth.

Lawful way of fishing.

Rivers wherein fish may be taken with seine.

SEC. 4. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Repealing clause.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 15th, 1877.

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INDIGENT INSANE.

Resolved by the House of Representatives and Council of the Legislative Assembly of the Territory of Montana:

That the governor be and is hereby authorized, by publication for three weeks in a newspaper published at the capital of the territory, inviting proposals for the care and maintenance of the indigent insane of Montana territory, and to let the contract to the lowest responsible bidder; but the governor shall have the right to reject any and all bids, and make a private contract, provided such contract can be made at less price than any bids made under publication for proposals, and that such indigent insane shall be maintained under such contract so long as in the judgment of the governor the interests of the territory will be subserved thereby; and that upon the receipt of any account for such maintenance the governor shall certify to the same, if it be correct, and thereupon it shall be the duty of the territorial auditor to draw his warrant upon the territorial treasurer for an amount of money sufficient to pay therefor: *Provided*, That the governor shall not contract, under this resolution, for a period extending beyond the completion of the asylum for the insane; and, *provided further*, that whenever, in the judgment of the governor, it is desirable to send such insane person to friends out of the territory, he may do so at the expense of the territory; and whenever, in his judgment, the interests of such insane persons, and of the territory, will be promoted by changing the said contract to some other institution or person, at a rate not exceeding that mentioned in said communication, he may do so, and the expenses shall be paid by warrants drawn on the territorial treasurer, to be sold by the auditor, to raise the money herein authorized to be expended: *Provided, further*, That the costs necessarily attending the adjudication of insanity, and transportation of any insane persons to the place provided for their care and maintenance, shall be paid by the county where such insane person resides at the time he may be adjudged to be insane: *Pro-*

Governor may contract for keeping the indigent insane.

Limit of term of contract.

Insane may be sent to friends out of territory.

Costs for transporting insane out of territory.

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vided, further, That idiotic persons shall be classed with insane persons under the provisions of this act, and the word "maintenance," in this act, shall be construed to mean and include medical attendance.

Construction of this act.

Approved February 16th, 1877.

LAWS.

AN ACT to provide for the copying of laws for publication.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. The secretary of Montana territory shall employ some suitable person whose duty it shall be to make correct copies of such laws of the tenth session of the legislative assembly of this territory, as may be designated for publication in pursuance of law, and shall furnish such copies to the party authorized by the laws of this territory to publish the same. The person copying such laws shall receive no greater compensation therefor than ten cents per folio for each and every folio of one hundred words so copied, and shall make but one copy of each law designated to be published.

Secretary to employ clerk to copy for the printing "triumvirate."

Clerk of printing triumvirate to get ten cents per folio!

SEC. 2. The auditor of the territory shall ascertain the number of folios copied, and the amount due therefor, under the provisions of this act, and is authorized to draw his warrant on the territorial treasurer for such sum as may be found due for such copying, and the same shall be paid by said treasurer out of any moneys in the territorial treasury not otherwise appropriated.

Auditor to audit and draw warrant to pay printing triumvirate's clerk.

Approved February 16th, 1877.

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LEGISLATIVE ASSEMBLY.

AN ACT to fix the time of holding the regular sessions of the future legislative assemblies of Montana territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the regular sessions of the legislative assembly of this territory shall be held at the capital, and the next regular session thereof shall commence at 12 o'clock M. on the second Monday of January, A. D. 1879, and said sessions shall be held biennially thereafter, commencing at 12 o'clock M. on the second Monday of Jannary of each year upon which said sessions are to be held under the provisions of this act.

Time of meeting of the biennial session of the legislature.

SEC. 2. All acts and parts of acts in conflict with this act be and the same are hereby repealed.

Approved February 16th, 1877.

LICENSES.

AN ACT to amend "An Act concerning licenses," approved May 8th, 1873.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That section 5 of "An Act concerning licenses," approved May 8th, 1873, be amended so as to read as follows: "SEC. 5. Every person who has a fixed place of business, who may deal in goods, wares, or merchandise, wines or liquors, drugs or medicines, jewelry, or wares of precious metals, or who shall expose the same for sale, shall pay a license as follows: Those whose sales are ten thousand dollars or more per month shall constitute the first class, and shall pay a license of fifty dollars per quarter; those whose sales are five thousand dollars and under ten thousand per month shall constitute the second class, and shall pay a license of thirty dollars per quarter; those whose sales are two thousand dollars and under five thousand

License tax for merchants, jewelers, druggists, &c.

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dollars per month shall constitute the third class, and shall pay a liceense of twenty dollars per quarter; and those whose sales are one thousand and under two thousand dollars per month shall constitute the fourth class, and shall pay a license of fifteen dollars per quarter; and those whose sales are five hundred dollars and under one thousand dollars per month shall constitute the fifth class, and shall pay a license of ten dollars per quarter; and those whose sales are under five hundred dollars per month shall constitute the sixth class, and shall pay a license of five dollars per quarter: *Provided*, The sales of liquors or wines licensed in this section shall not be in less quantities than one quart."

Proviso.

SEC. 2. That section 9 of said act be so amended as to read as follows: "SEC. 9. That every traveling merchant, hawker, or peddler, who shall carry a pack or trunk, and shall sell goods, wares, or merchandise, shall pay a license of five dollars per quarter; if he travel with wagon or other vehicle and sell goods, wares, or merchandise, he shall pay a license of twenty dollars per quarter for each wagon or vehicle; if he travel with a pack animal and sell goods, wares, or merchandise, he shall pay a license of fifteen dollars per quarter for such pack animal: *Provided*, That no license shall be required to be paid by any person who sells any production of this territory, raised or manufactured by himself."

License tax for hawker and peddler.

Proviso.

SEC. 3. That all persons who may hereafter come into this territory, and who shall take orders for the sale of any goods, wares, or merchandise, to be delivered after such orders, or shall sell, or offer to sell, any goods, wares, or merchandise, by sample, such persons being commonly known as traveling commercial agents, shall, before carrying on any such business, pay a license therefor of ten dollars per quarter in each county where such business may be transacted.

License tax for commercial or traveling agents.

SEC. 4. That section 17 of said act be amended so as to read as follows: "SEC. 17. Every person who

License tax for lotteries.

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shall carry on the gift lottery or prize distribution business within this territory, shall pay a license therefor of fifty dollars per quarter: *Provided*, That no fee shall be collected by any county treasurer in this territory for granting or issuing any license, in any case whatever, under the provisions of this act, or the act to which this is amendatory, any law heretofore passed to the contrary notwithstanding."

No fee allowed treasurer for issuing license.

SEC. 5. That this act take effect and be in force from and after its passage.

Approved February 16th, 1877.

LIVE STOCK.

AN ACT in relation to live stock.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. If any person or persons shall hereafter mark or brand, or cause to be marked or branded, any horse, mule, ox, cow, sheep, swine, or other animal, the property of another person, whether the same be done by mistake or otherwise, such person or persons so marking or branding any such animal, or causing the same to be done, shall pay to the owner of the same three times the value thereof; and any such owner shall have the right to sue in any court of competent jurisdiction, and recover from any such person or persons marking or branding as aforesaid three times the value of the animal so marked or branded.

Penalty for branding property of another.

Right of owner to sue.

SEC. 2. That any person or persons who shall drive, or cause to be driven, any cattle, horses, mules, sheep, or swine, from their customary range, without the permission of the owner or owners thereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof before any justice of the peace in the territory of Montana, may be fined in any sum not less than five nor more than one hundred dollars, or may be imprisoned

Stock not to be driven off its range without consent of owner.

Penalty for violation of this section.

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in the county jail for a period not less than ten days nor more than ninety days, or by both such fine and imprisonment, at the discretion of the court.

SEC. 3. That if any person or persons shall cut off either or both ears close to the head of any cow, calf, ox, sheep, or swine, he or they shall be deemed guilty of misdemeanor, and, on conviction thereof, shall be fined in any sum not less than five nor more than twenty-five dollars, or by imprisonment in the county jail for a period not less than five nor more than thirty days, at the discretion of the court. Penalty for cutting off ears of animals.

SEC. 4. All fines collected under the provisions of this act shall be paid into the common school fund of the county where such offense was committed. Fines paid into school fund.

Approved February 8th, 1877.

LIVE STOCK.

AN ACT for the repeal of an act entitled "An Act concerning the management of live stock, and to protect the intersts of stock-growers in the territory of Montana."

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That an act entitled "An Act concerning the management of live stock, and to protect the interests of stock-growers in the territory of Montana," approved February 11th, 1876, be and the same is hereby repealed. Act repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 8th, 1877.

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MECHANICS' LEINS.

AN ACT to amend Chapter XL. of "An Act revising, re-enacting, and codifying the general and permanent laws of Montana," approved January 12th, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the lein given by section 1 of the chapter to which this act is amendatory, shall extend to the lot or land upon which any such building, improvement, or structure is situated, to the extent of one acre, if outside any town or city; or, if within any town or city, then to the extent of the whole lot or lots upon which the same is situated, if the land belonged to the person who caused said building to be constructed, altered, or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

Extent of lien as to land or lots.

SEC. 2. All liens for work or labor done, or material furnished, upon the same premises, which shall be filed within thirty days after the filing of the first lien on such premises, shall entitle the holder thereof to share equally, *pro rata*, according to the amount of their respective liens, in the proceeds arising from the sale of such premises upon the foreclosure of such liens. If, after the expiration of thirty days, other liens shall be filed against such premises, then all liens filed within sixty days after the filing of such subsequent lien shall be liens of the second class, and share *pro rata* in any proceeds arising from the sale of the said premises which may remain after all liens of the first class have been paid.

Time of filing lien.

How lienholders to share.

SEC. 3. The liens for work or labor done, or material furnished, as specified in the act to which this is amendatory, shall be prior to, and have precedence over, any mortgage, incumbrance, or other lien made subsequent to the commencement of work on any contract for the erection of such building or other improvement.

Priority of liens.

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SEC. 4. Section 8 of Chapter XL. of the codified statutes, and all acts and parts of acts in conflict with this act, are hereby repealed. Section repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 16th, 1877.

PROBATE PRACTICE ACT.

AN ACT relating to probate courts and estates of deceased persons.

Be it enacted by the Legislative Assembly of the Territory of Montana:

CHAPTER I.

ARTICLE I.— *Organization and Jurisdiction of Probate Courts in Montana.*

SECTION 1. The probate court has jurisdiction—

First. To open and receive proof of last wills and testaments, and to admit them to probate.

Second. To grant letters testamentary, of administration, and of guardianship, and to revoke the same.

Third. To appoint appraisers of estates of deceased persons.

Fourth. To compel executors, administrators, and guardians to render accounts. Probate courts—jurisdiction and powers of probate courts.

Fifth. To order the sale of property of estates or belonging to minors.

Sixth. To order the payment of debts due from estates.

Seventh. To order and regulate all distributions and partitions of property or estates of deceased persons.

Eighth. To compel the attendance of witnesses and the production of title deeds, papers, and other property of an estate or of a minor.

Ninth. To exercise the powers conferred by this act.

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Tenth. To make such orders as may be necessary to the exercise of the powers conferred upon it.

Construction given to acts of probate courts.

The proceedings of probate courts shall be construed in the same manner and with like intendments as the proceedings of courts of general jurisdiction, and to its records, judgments, and decrees there is accorded like force and effect and legal presumptions, as to the records, orders, decrees, and judgments of district courts.

Effect given records and proceedings.

SEC. 2. The judges of probate courts may, at chambers, appoint appraisers, receive inventories and accounts, to be filed in probate court; suspend the powers of executors, administrators, or guardians, in the cases allowed by law; grant special letters of administration or guardianship; approve claims and bonds, and direct the issuance from the probate courts of all writs and processes necessary in the exercise of their power.

Powers of judge at chambers.

SEC. 3. Any probate judge may hold terms, or portions of terms, in any other county than, as well as in, that for which he was elected, in cases of sickness of the proper judge, or to hear, try, adjudicate, and determine all causes and matters in which the probate judge of the proper county is interested or has been employed as an attorney, or is disqualified by law from trying or adjudicating.

When probate judge may act in another county.

SEC. 4. When, from any of the causes mentioned in the preceding section, a term or part of a term of a probate court cannot be held in a county by the judge thereof, the judge disqualified may, by the consent of parties to the action or proceedings, which such judge is disqualified from adjudicating, designate the county, or probate judge of some other county, to hold such term or portion of term; and if the parties fail thus to consent, a certificate of such fact of disqualification, or in case of sickness of the judge, then of the fact of such sickness, must be transmitted by the clerk of such court to the governor, who must thereupon direct some probate judge of a neighboring county to hold such term or part of term.

Authority by which probate judge may act in another county.

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SEC. 5. The seal of the court need not be affixed to any proceedings therein, except—

First. To a writ.

Second. To the proof of a will or the appointment of an executor, administrator, or guardian. Use of the seal of probate court.

Third. To the authentication of a copy of a record or other proceeding of the court, or officer thereof, for the purpose of being used in evidence in another court.

ARTICLE II.—*Of Local Jurisdiction.*

SEC. 6. Wills must be proved, and letters testamentary or of administration granted:

First. In the county of which the decedent was a resident at the time of his death, in whatever place he may have died.

Second. In the county in which the decedent may have died leaving estate therein, he not being a resident of the territory.

Third. In the county in which any part of the estate may be, the decedent having died out of the territory, and not resident thereof at the time of his death. County where will may be proved and letters granted.

Fourth. In the county in which any part of the estate may be, the decedent not being a resident of the territory, and not having estate in the county in which he died.

Fifth. In all other cases, in the county where application for letters is first made.

SEC. 7. When the estate of the decedent is in more than one county, he having died out of the territory, and not having been a resident thereof at the time of his death, or, being such non-resident, and dying within the territory, and not leaving estate in the county where he died, the probate court of that county in which application is first made for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate. Petition to have will proved. In case decedent die out of county where estate is.

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CHAPTER II.—PROBATE OF WILLS.

ARTICLE I.

Custodian of will to deliver same to proper court.

SEC. 8. Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the probate court having jurisdiction of the estate, or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by any one injured thereby.

SEC. 9. Any executor, devisee, or legatee named in any will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will proved, whether the same be in writing in his possession or not, or is lost or destroyed, or beyond the jurisdiction of the territory, or a nuncupative will.

SEC. 10. A petition for the probate of a will must show:

First. The jurisdictional facts.

Second. Whether the person named as executor consents to act, or renounces his right to letters testamentary.

Third. The names, ages, and residence of the heirs and devisees of the decedent, so far as known to the petitioner.

What petition for probate of will must show.

Fourth. The probable value and character of the property of the estate.

Fifth. The name of the person for whom letters testamentary are prayed.

No defect of form or in the statement of jurisdictional facts actually existing shall make void the probate of a will.

When court may appoint administrator in place of executor.

SEC. 11. If the person named in a will as executor, for thirty days after he has knowledge of the death of the testator, and that he is named as executor, fails to petition the proper court for the probate of the will, and that letters testamentary be issued to him, he has renounced his right to letters, and the court may appoint

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any other competent person administrator, unless good cause for delay is shown.

SEC. 12. If it is alleged in any petition that any will is in the possession of a third person, and the court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will requiring him to produce it at a time named in the order. If he has possession of the will and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to the jail of the county, and be kept in close confinement until he produces it.

Order to produce will in possession of third party.

SEC. 13. When the petition is filed and the will produced, the probate judge must fix a day for hearing the petition, not less than ten nor more than thirty days from the production of the will. Notice of the hearing shall be given by the clerk of the court, by publishing the same in a newspaper of the county; if there be none, then by three written or printed notices posted at three of the most public places in the county. If the notice is published in a weekly newspaper, it must appear therein on at least three different days of publication, and if in a newspaper published oftener than once a week, it shall be so published that there must be at least ten days from the first to the last day of publication, both the first and the last day being included. If the notice is by posting, it must be given at least ten days before the hearing.

Notice to be given of hearing petition for probate of will.

SEC. 14. Copies of the notice of the time appointed for the probate of the will must be addressed to the heirs of the testator resident in the territory, at their places of residence, if known to the petitioner, and deposited in the post office, with the postage thereon prepaid, at least ten days before the hearing. If their places of residence be not known, the copies of notice may be addressed to them and deposited in the post office at the county seat of the county where the proceedings are pending. A copy of the same notice must in

Notice—how addressed and on whom served.

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like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor, not petitioning, if their places of residence be known. Proof of mailing the copies of the notice must be made at the hearing. Personal service of copies of the notice at least ten days before the day of the hearing is equivalent to mailing.

Powers of probate judge at chambers concerning wills.

SEC. 15. The probate judge may, out of term time or at chambers, receive petitions for the probate of wills, and make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses, and may appoint special terms of his court for hearing the petitions, trials of issues, and admitting wills to probate.

Proof of service of notice to probate will.

SEC. 16. At the time appointed for the hearing, or the time to which the hearing may have been postponed, the court, unless the parties appear, must require proof that the notice has been given, which being made, the court must hear testimony in proof of the will.

Who may contest will.

SEC. 17. Any person interested may appear and contest the will. Devisees, legatees, or heirs of an estate may contest the will through their guardians, or attorneys appointed by themselves or by the court for that purpose; but a contest made by an attorney appointed by the court does not bar a contest after probate by the party so represented, if commenced within the time provided in Article IV. of this chapter; nor does the non-appointment of an attorney by the court of itself invalidate the probate of a will.

If will not contested, same may be probated.

SEC. 18. If no person appears to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

Olographic will may be probated.

SEC. 19. An olographic will may be proved in the same manner that other writings are proved.

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ARTICLE II.— *Contesting Probate of Wills.*

SEC. 20. If any one appears to contest the will, he must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the county interested in the estate, any one or more of whom may demur thereto to any of the grounds of demurrer provided for in the civil practice act of this territory applicable hereto. If the demurrer is sustained, the court must allow the contestant a reasonable time, not exceeding ten days, within which to amend his written opposition. If the demurrer is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing or otherwise obviating or avoiding the objections. Any issues of fact thus raised, involving: 1, the competency of the decedent to make a last will and testament; 2, the freedom of the decedent, at the time of the execution of the will, from duress, menace, fraud, or undue influence; 3, the due execution and attestation of the will by the decedent or subscribing witnesses; or, 4, any other substantial grounds affecting the validity of the will — must, on request of either party in writing (filed three days prior to the day set for the hearing), be tried by a jury. If no jury is demanded, the court must try and determine the issues joined.

Proceedings to contest will.

On the trial the contestant is plaintiff, and the petitioner is defendant.

SEC. 21. When a jury is demanded, the probate court must summon and impanel a jury to try the case in the manner provided for summoning and impaneling trial juries in courts of record, and the trial must be conducted in accordance with the provisions of the civil practice act for trials of issues of fact. A trial by the court must be conducted as provided in said civil practice act in cases of trials by the court.

If jury demanded, court to summon.

How trial conducted.

SEC. 22. The jury, after hearing the case, must return a special verdict upon the issues submitted to them by the court; upon which the judgment of the court

Verdict of jury.

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must be rendered, either admitting the will to probate or rejecting it. In either case the proofs of the subscribing witnesses must be reduced to writing. If the will is admitted to probate, the judgment, will, and proofs must be recorded.

Production and examination of witnesses in case will contested.

SEC. 23. If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

When testimony of witness used in subsequent contest.

SEC. 24. The testimony of each witness, reduced to writing and signed by him, shall be good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead or has permanently removed from the territory.

Certificate of proof of will attached to will.

SEC. 25. If the court is satisfied, upon the proof taken, or from the facts found by the jury, that the will was duly executed, and that the testator, at the time of its execution, was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, a certificate of the proof and the facts found, signed by the probate judge, and attested by the seal of the court, must be attached to the will.

Certificate of proof and will filed and recorded.

SEC. 26. The will and a certificate of the proof thereof, together with all the testimony taken, must be filed by the clerk, and recorded by him in a book to be provided for the purpose.

ARTICLE III.—*Probate of Foreign Wills.*

Will proved out of territory may be allowed and recorded in proper county in territory.

SEC. 27. Every will duly proved and allowed in any other state or territory of the United States, or in any foreign country or state, may be allowed and recorded in

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the probate court of any county in which the testator shall have left any estate.

Proceedings for probate of wills made out of territory same as those made in territory.

SEC. 28. When a copy of the will and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the court or judge must appoint a time for the hearing; notice whereof must be given, as hereinbefore provided for an original petition for the probate of a will.

Force and effect of wills made and duly probated and allowed out of territory.

SEC. 29. If, on the hearing, it appears upon the face of the record that the will has been proved, allowed, and admitted to probate, in any other state or territory of the United States, or in any foreign country, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this territory, it must be admitted to probate, and have the same force and effect as a will admitted to probate in this territory, and letters testamentary, or of administration, issued thereon.

ARTICLE IV.— *Contesting Wills after Probate.*

Time in which wills may be contested after probate.

SEC. 30. When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same, or the validity of the will. For that purpose he must file in the court in which the will was proved a petition, in writing, containing his allegations against the validity of the will, or against the sufficiency of the proof, and praying that the probate may be revoked.

Proceedings to contest will after probate.

Process after petition is filed to contest will after probated.

SEC. 31. Upon filing the petition a citation must be issued to the executors of the will, or to the administrators, with the will annexed, and to all the legatees and devisees mentioned in the will, and heirs residing in the territory, so far as known to the petitioner — or to their guardians, if any of them are minors; or to their personal representatives, if any of them are dead — requiring them to appear before the court, on some day of a

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regular term therein specified, to show cause why the probate of the will should not be revoked.

Issues of fact tried as in original contest.

SEC. 32. At the time appointed for showing cause, or at any time to which the hearing is postponed, personal service of the citations having been made upon any persons named therein, the court must proceed to try the issues of fact joined in the same manner as in an original contest of a will.

When trial by jury to be had on petition to revoke probate of will.

SEC. 33. In all cases of petitions to revoke the probate of a will, wherein the original probate was granted without a contest, on written demand of either party, filed three days prior to the hearing, a trial by jury must be had, as in cases of the contest of an original petition to admit a will to probate. If, upon hearing the proofs of the parties, the jury shall find, or, if no jury is had, the court shall decide, that the will is for any reason invalid, or that it is not sufficiently proved to be the last will of the testator, the probate must be annulled and revoked.

When court shall revoke probate of will.

If probate of will revoked powers of executor or administrator revoked.

SEC. 34. Upon the revocation being made the powers of the executor or administrator, with the will annexed, must cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

Costs on petition to revoke

SEC. 35. The fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate be confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

Limitation as to contest of will.

SEC. 36. If no person, within one year after the probate of a will, contest the will or the validity thereof, the probate of the will is conclusive; saving to infants, and persons of unsound mind, a like period of one year after their respective disabilities are removed.

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ARTICLE V.—*Probate of Lost or Destroyed Will.*

SEC. 37. Whenever any will is lost or destroyed, the probate court must take proof of the execution and validity thereof, and establish the same; notice to all persons interested being first given, as prescribed in regard to proofs of wills in other cases. All the testimony given must be reduced to writing, and signed by the witnesses.

Will lost or destroyed may be probated.

SEC. 38. No will shall be proved as a lost or destroyed will, unless the same is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently destroyed in the life time of the testator; nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.

Cases in which lost or destroyed will may be probated.

SEC. 39. When a lost will is established, the provisions thereof must be distinctly stated and certified by the probate judge, under his hand and the seal of the court; and the certificate, together with the testimony upon which it is founded, must be filed and recorded as other wills are filed and recorded; and letters testamentary or of administration, with the will annexed, must be issued thereon, in the same manner as upon will produced and duly proved. The testimony must be reduced to writing, signed, certified, and filed as in other cases, and shall have the same effect as evidence, as provided in section 20 of this act.

Record of court in case lost will established.

Letters in such case.

Testimony reduced to writing, effect of.

SEC. 40. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator, or letters testamentary of any previous will of the testator are granted, the court may restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

If letters are granted on estate, and suit to probate lost will brought, the court may restrain administrator until suit settled.

ARTICLE VI.—*Probate of Nuncupative Wills.*

SEC. 41. Nuncupative wills may, at any time within six months after the testamentary words are spoken by

Nuncupative will may be proven.

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the decedent, be admitted to probate on petition and notice as provided in Article I., Chaper II., of this act. The petition, in addition to the jurisdictional facts, must allege that the testamentary words, or the substance thereof, were reduced to writing within thirty days after they were spoken, which writing must accompany the petition.

Petition to prove nuncupative will.

SEC. 42. The probate court must not receive or entertain a petition for the probate of a nuncupative will until the lapse of fourteen days from the death of the testator, nor must such petition at any time be acted on until the testamentary words are, or their substance is, reduced to writing and filed with the petition, nor until the surviving husband or wife (if any) and all the other persons, resident in the territory or county, interested in the estate, are notified as hereinbefore provided.

When probate court may entertain petition to probate nuncupative will.

SEC. 43. Contests of the probate of nuncupative wills, and appointments of executors and administrators of the estate devised thereby, must be had, conducted, and made as hereinbefore provided in cases of the probate of written wills.

Contest of nuncupative will.

CHAPTER III.

ARTICLE I.—*Letters Testamentary and of Administration — How and to Whom Issued.*

SEC. 44. The court admitting a will to probate, after the same is proved and allowed, must issue letters thereon to the persons named therein as executors, who are competent to discharge the trust, who must appear and qualify, unless objection is made, as provided in section 41 of this act.

Court to issue letters to executor.

Executor to qualify.

SEC. 45. No person is competent to serve as executor who, at the time the will is admitted to probate, is:

First. Under the age of majority.

Second. Convicted of an infamous crime.

Third. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness

Persons who shall not act as executors.

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improvidence, or want of understanding or integrity, or who is absent from or resides out of the territory.

If the sole executor, or all the executors, are incompetent, or renounce or fail to apply for letters, or to appear and qualify, letters of administration with the will annexed must be issued.

Persons interested in will may object to executor named.

SEC. 46. Any person interested in a will may file objections in writing to granting letters testamentary to the persons named as executors, or any of them, and the objections must be heard and determined by the court. A petition may at the same time be filed for letters of administration with the will annexed.

Petition for letters with will annexed

Married woman as executrix.

SEC. 47. When an unmarried woman, appointed executrix, marries, her authority is extinguished. When a married woman is named as executrix, she may be appointed and serve in every respect as a *feme sole*.

Concerning letters *de bonis non*, where decedent was an executor.

SEC. 48. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator left unadministered, must be issued.

In case executor is absent from territory or a minor.

SEC. 49. Where a person absent from the territory, or a minor, is named executor, if there is another executor who accepts the trust and qualifies, the latter may have letters testamentary and administer the estate until the return of the absentee, or the majority of the minors, who may then be admitted a joint executor. If there is no other executor, letters of administration with the will annexed must be granted, but the court may, in its discretion, revoke them on the return of the absent executor or the arrival of the minor at the age of majority.

If all the executors named in will not appointed, those appointed sufficient.

SEC. 50. When all the executors named are not appointed by the court, those appointed have the same authority to perform all acts and discharge the trust required by the will as effectually for every purpose as if all were appointed and should act together. Where there are two executors or administrators, the act of one alone shall be

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effectual if the other is absent from the territory, or laboring under any legal disability from serving, or if he has given his co-executors or co-administrators authority, in writing, to act for both; and where there are more than two executors or administrators, the act of the majority shall be valid.

Where act of majority valid.

Administrator with will annexed has same power as executor.

Authentication of letters.

SEC. 51. Administrators with the will annexed have the same authority over the estates which executors named in the will would have, and their acts are as effectual for all purposes. Their letters must be signed by the clerk of the court, and bear the seal of the court.

ARTICLE II.—*Form of Letters.*

SEC. 52. Letters testamentary must be substantially in the following form:

"*Territory of Montana, County of* ———:

"The last will of A B, deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ———, C D, who is named therein, is hereby appointed executor.

Form of letters testamentary.

"Witness, G H, clerk of said county, with the seal of said court affixed, this the —— day of ——, A. D. 18—.

"By order of the court.

[L. S.] "G H, *Clerk.*"

SEC. 53. Letters of administration with the will annexed must be substantially in the following form:

"*Territory of Montana, County of* ———:

"The last will of A B, deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ———, and there being no executor named in said will (or as the case may be), C D is hereby appointed administrator with the will annexed.

Form of letters with will annexed.

"Witness, G H, clerk of said court, with the seal thereof affixed, this the —— day of ——, A. D. 18—.

"By order of the court.

[L. S.] "G H, *Clerk.*"

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SEC. 54. Letters of administration must be signed by the clerk, under the seal of the court, and substantially in the following form:

"*Territory of Montana, County of* ———:

Form of authentication of letters of administration.

"C D is hereby appointed administrator of the estate of A B, deceased.

"Witness, G H, clerk of the probate court of said county, with seal thereof affixed, this the —— day of ——, A. D. 18—.

"By order of court.

[L. S.] "G H, *Clerk.*"

ARTICLE III.—*Letters of Administration—To whom and the Order in which Granted.*

SEC. 55. Administrators of the estate of a person dying intestate, must be granted to some one or more of the persons hereinafter mentioned, who are respectively entitled thereto, in the following order:

First. The surviving husband or wife, or some competent person, whom he or she may request to have appointed.

Second. The children.

Third. The father and mother.

Fourth. The brothers.

Fifth. The sisters.

Sixth. The grandchildren.

To whom letters of administration granted on estate of intestate.

Seventh. The next of kin entitled to share in distribution of the estate.

Eighth. The creditors.

Ninth. The public administrator.

Tenth. Any person legally competent.

If the decedent was a member of a co-partnership at the time of his death, the surviving partner must in no instance be appointed administrator of the estate; and, *provided, further*, that no person who is not a resident of this territory shall be appointed administrator.

SEC. 56. Of several persons claiming and equally entitled to administer, males must be preferred to females,

Preference where several persons claim letters.

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and relatives of the whole blood to those of the half blood.

Discretion of court where several persons claim letters and equally entitled.

SEC. 57. When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters, the court may, in its discretion, at the request of another creditor, grant letters to any other person legally competent.

In case person entitled to letters is a minor.

SEC. 58. If any person entitled to administration is a minor, letters must be granted to his or her guardian, or any other person entitled to letters of administration, in the discretion of the court.

SEC. 59. No person is competent to serve as administrator or administrix, who, when appointed, is —

Persons who can not administer.

First. Under the age of majority.

Second. Convicted of an infamous crime.

Third. Adjudged by the court to be incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

Married woman not to be administratrix.

SEC. 60. A married woman must not be appointed administratrix. When an unmarried woman appointed administratrix marries, her authority is extinguished.

ARTICLE IV. — *Petition for Letters and Action Thereon.*

Petition for letters of administration and requisites of.

SEC. 61. Petitions for letters of administration must be in writing, signed by the applicant, or his attorney, and filed with the clerk of the court, stating the facts, to give the court jurisdiction of the case, and when known to the applicant, he must state the names, ages, and residence of the heirs of the decedent, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and afterwards proved in the course of administration, the decree or order of administration, and subsequent proceedings, are not void for want of such jurisdictional averments.

Term at which letters may be granted.

SEC. 62. Letters of administration may be granted at a regular term of court, or at a special term appointed by the judge for the hearing of the application.

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SEC. 63. When a petition praying for letters of administration is filed, the clerk must give notice thereof by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the applicant, and term of court at which the application will be heard. Such notice must be given at least ten days before the hearing.

The petition for letters filed notice given.

SEC. 64. Any person interested may contest the petition by filing written opposition thereto, on the ground of incompetency of the applicant, or may assert his own right to the administration, and pray that letters may be issued to himself. In the latter case the contestant must file a petition and give the notice required for the original petition, and the court must hear the two petitions together.

When petition may be objected to.

SEC. 65. On the hearing, it being first proved that notice has been given as herein required, the court must hear the allegations and proofs of the parties, and order the issuing of letters of administration to the party best entitled thereto.

Hearing of petition for letters and issuance of.

SEC. 66. An entry in the minutes of the court that the required proof was made and notice given shall be conclusive evidence of the fact of such notice.

Evidence of entry in minutes, and of proof and notice.

SEC. 67. Letters of administration must be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such person fail to appear and claim the issuing of letters to himself.

When letters granted applicant, though others entitled.

SEC. 68. Before letters of administration are granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate must be proved by the testimony of the applicant or others; and the court may also examine any other person concerning the time, place, and manner of his death, the place of his residence at the time, the value and character of his property, and whether or not the decedent left a will, and may compel any person to attend as a witness for that purpose.

Facts that shall appear before letters granted.

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Appointment of administrator at request of person entitled.

SEC. 69. Administration may be granted to any one or more competent persons, although not entitled to the same, at the written request of the person entitled, filed in court.

ARTICLE V.—*Revocation of Letters and Proceedings Therefor.*

Revocation of letters at instance of person entitled to administer.

SEC. 70. When letters of administration have been granted to any person other than the surviving husband or wife, child, father, mother, brother, or sister of the intestate, any one of them may obtain the revocation of the letters, and be entitled to the administration, by presenting to the probate court a petition praying the revocation, and that letters of administration may be issued to him.

Notice and citation after petition filed to revoke letters.

SEC. 71. When such petition is filed, the clerk must, in addition to the notice provided in section 57, issue a citation to the administrator to appear and answer the same at the time appointed for the hearing.

Hearing of petition to revoke.

SEC. 72. At the time appointed, the citation having been duly served and returned, the court must proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he is competent, letters of administration must be granted to him, and the letters of the former administrator revoked.

When surviving husband or wife may have letters revoked and re-issued.

SEC. 73. The surviving husband or wife, when letters of administration have been granted to a child, father, brother, or sister of the intestate, or any of such relatives, when letters have been granted to any other of them, may assert his prior right, and obtain letters of administration, and have the letters before granted revoked in the manner prescribed in the three preceding sections.

ARTICLE VI.—*Executors and Administrators—Oath and Bond of.*

Oath of administrator.

SEC. 74. Before letters testamentary or of administration are issued to the executor or administrator, he

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must take and subscribe an oath before some officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator; which oath must be attached to the letters.

All letters testamentary and of administration issued to, and all bonds executed by, executors or administrators, with the affidavits and certificates thereon, must be forthwith recorded by the clerk of the court having jurisdiction of the estates, in books to be kept by him in his office for that purpose.

Records of letters, bonds, affidavits, &c.

SEC. 75. Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the territory of Montana, with two or more sufficient sureties, to be approved by the probate judge. The penalty must not be less than twice the value of the personal property and twice the probable value of the annual rents, profits, and issues of the real property belonging to the estate, which values must be ascertained by the probate judge by examining, on oath, the party applying, and any other persons.

Bond of executor or administrator.

SEC. 76. The probate judge must require an additional bond whenever the sale of any real estate belonging to an estate is ordered by him; but no such additional bond must be required when it satisfactorily appears to the court that the penalty of the bond given before receiving letters, or of any bond given in place thereof, is equal to twice the value of the personal property remaining in, or that will come into, the possession of the executor or administrator, including the annual rents, profits, and issues of real estate, and twice the probable amount to be realized on the sale of the real estate to be sold.

When probate judge must require additional bond.

SEC. 77. The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

Condition of bond.

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Each executor or administrator to give bond.

SEC. 78. When two or more persons are appointed executors or administrators, the probate judge must require and take a separate bond from each of them.

Several recoveries may be had on same bond.

SEC. 79. The bond shall not be void upon the first recovery, but may be sued and recovered upon from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

Sureties on bond to justify.

SEC. 80. In all cases where bonds or undertakings are required to be given, under this title, the sureties must justify thereon, in the same manner and in like amounts, as required in cases of appeal to the supreme court in the civil practice act; and the certificate thereof must be attached to, and filed and recorded with, the bond or undertaking.

Bonds to be approved by probate judge

All such bonds and undertakings must be approved by the probate judge, before being filed or recorded.

Probate judge may examine sureties as to their worth.

SEC. 81. Before any probate judge approves any bond required under this title, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue requiring such sureties to appear before him, at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause a notice to be issued to the executor or administrator, requiring his appearance on the return of the citation; and on its return he may examine the sureties, and such witnesses as may be produced, touching the property of the sureties and its value; and if, upon such examination, he is satisfied that the bond is insufficient, he must require sufficient additional security.

May require additional security.

If sufficient bond not given, letters revoked.

SEC. 82. If sufficient security is not given within the time fixed by the judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, must be appointed to the administration.

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SEC. 83. When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue, and sales of real estate be made and confirmed, without any bond, unless the court, for good cause, require one to be executed; but the executor may at any time afterwards, if it appear from any cause necessary or proper, be required to file a bond as in other cases.

Letters issued without bond where will provided none, may be required in certain cases.

SEC. 84. Any person interested in an estate may, by verified petition, represent to the probate judge that the sureties of the executor or administrator thereof have become or are becoming insolvent, or that they have removed or are about to remove from the territory, or, from any other cause, that the bond is insufficient, and ask that further security be required.

Person interested in estate may petition probate judge to have additional bond given.

SEC. 85. If the probate judge is satisfied that the matter requires investigation, a citation must be issued to the executor or administrator, requiring him to appear at a time and place to be therein specified, to show cause why he should not give further security. The citation must be served personally on the executor or administrator, at least five days before the return day. If he has absconded, or cannot be found, it may be served by leaving a copy of it at his place of residence, or by such publication as the court or judge may order.

Citation to administrator or executor to give additional security.

SEC. 86. On the return of the citation, or at such other time as the judge may appoint, he must proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time—not less than five days.

Proceedings on citation when issued under last section.

Order for additional security.

SEC. 87. If the executor or administrator neglects to comply with the order within the time prescribed, the judge must, by order, revoke his letters, and his authority must thereupon cease.

If order not complied with under last section, letters revoked.

SEC. 88. When a petition is presented, praying that

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an executor or administrator be required to give further security, or to give bond, if, by the terms of the will, no bond was originally required, and it is alleged, on oath, that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

If executor or administrator charged with wasting estate may be suspended.

SEC. 89. When it comes to his knowledge that the bond of any executor or administrator is from any cause insufficient, the probate judge, without any application, must cause him to be cited to appear and show cause why he should not give further security; and must proceed thereon as upon the application of any person interested.

When probate judge may cite executor or administrator to give additional bond.

SEC. 90. Where a surety of any executor or administrator desires to be released from responsibility on account of future acts, he may make application to the probate court or judge for relief. The court or judge must cause a citation to the executor or administrator to be issued, and served personally, requiring him to appear at a time and place to be therein specified, and to give other security; if he has absconded, left, or removed from the territory, or if he cannot be found after due diligence and inquiry, service may be made as provided in section 85.

Proceeding where surety asks to be relieved from further responsibility on bond.

SEC. 91. If new sureties be given to the satisfaction of the judge, he may thereupon make an order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default, or misconduct of the executor or administrator.

If new sureties given former sureties relieved.

SEC. 92. If the executor or administrator neglects or refuses to give new sureties, to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, unless the surety making the application shall consent to a longer extension of time, the court or judge must, by order, revoke his letters.

If new sureties not given letters revoked.

SEC. 93. The applications authorized by the nine preceding sections of this chapter may be heard and determined out of term time.

When applications under nine preceding sections may be heard

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All orders made therein must be entered upon the minutes of the court. Orders therein.

ARTICLE VII.—*Special Administrators and their Powers and Duties.*

SEC. 94. The liability of principal and sureties upon the bond of any executor, administrator, or guardian, is in all cases to pay in the kind of money or currency in which the principal is legally liable. Liability of principal and surety as to payment.

SEC. 95. When there is delay in granting letters testamentary or of administration, from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an administrator or executor dies or is suspended or removed, the probate judge must appoint a special administrator to collect and take charge of the estate of the decedent, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate, or he may direct the public administrator of his county to take charge of the estate. Cases where special administrator appointed to care for estate

SEC. 96. The appointment may be made out of term time, and without notice, and must be made by entry upon the minutes of the court specifying the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the clerk must issue letters of administration to such person in conformity with the order. When made, and record thereof.

SEC. 97. In making the appointment of a special administrator, the probate judge must give preference to the person entitled to letters testamentary or of administration, but no appeal must be allowed from the appointment. Of preference in appointment of special administrator.

SEC. 98. Before any letters issue to any special administrator, he must give bond in such sum as the probate judge may direct, with sureties to the satisfaction of the judge, conditioned for the faithful performance of his duties; and he must take the usual oath, and have the same endorsed on his letters. Bond of special administrator.

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SEC. 99. The special administrator must collect and preserve for the executor or administrator all the goods, chattels, debts, and effects of the decedent, all incomes, rents, issues, and profits, claims and demands of the estate; must take the charge and management of, enter upon and preserve from any damage, waste, and injury, the real estate, and for any such and all necessary purposes, may commence and maintain or defend suits and other legal proceedings, as an administrator; he may sell such perishable property as the probate court may order to be sold, and exercise such other powers as are conferred upon him by his appointment; but in no case is he liable to an action by any creditor on a claim against the decedent.

Duties of special administrator.

SEC. 100. When letters testamentary or of administration on the estate of the decedent have been granted, the powers of the special administrator cease, and he must forthwith deliver to the executor or administrator all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

When powers of special administrator to cease.

SEC. 101. The special administrator must render an account, on oath, of his proceedings, in like manner as other administrators are required to do.

Account of special administrator to be rendered.

ARTICLE VIII.— *Wills Found after Letters of Administration Granted, and Miscellaneous Provisions.*

SEC. 102. If, after granting letters of administration on the ground of intestacy, a will of the decedent is duly proved and allowed by the court, the letters of administration must be revoked, and the powers of administrator shall cease, and he must render an account of his administration within such time as the court shall direct.

If will found and proved after administration granted, letters of administration revoked.

SEC. 103. In such case, the executor, or the administrator with the will annexed, is entitled to demand, sue for, recover, and collect all the rights, goods, chattels,

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debts, and effects of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Powers of executor or administrator with will annexed, under last section.

SEC. 104. In case any one of the several executors or administrators, to whom letters are granted, dies, becomes lunatic, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust, or in case the letters testamentary or of administration are revoked or annulled with respect to any one executor or administrator, the remaining executor or administrator must proceed to complete the execution of the will or administration.

In case one executor or administrator die or becomes disqualified, the remaining one or ones to act.

SEC. 105. If all such executors or administrators die or become incapable, or the power and authority of all of them is revoked, the probate court must issue letters of administration with the will annexed, or otherwise, to the widow, or next of kin, or others, in the same order and manner as is directed in relation to original letters of administration. The administrators so appointed must give bond in the like penalty, with like sureties and conditions, as hereinbefore required of administrators, and shall have the like power and authority.

If all executors or administrators cease to act, other one appointed.

SEC. 106. Any executor or administrator may, at any time, by writing filed in the probate court, resign his appointment, having first settled his accounts, and delivered up all the estate to the person whom the court shall appoint to receive the same. If, however, by reason of any delays in such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate, or the right of those interested therein, require it, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sure-

Executor or administrator may resign.

When court may appoint special or general administrator.

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Bond of executor not affected by resignation.

ties on his bond, shall not be in any manner discharged, released, or affected by such appointment or resignation.

Validity of acts of executor or administrator ceasing to act before estate settled.

SEC. 107. All acts of an executor or administrator, as such, before the revocation of his letters testamentary, or of administration, are as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

Evidence as to appointment and qualification of executor or administrator.

SEC. 108. A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of his court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him, and have not been revoked, shall have the same effect in evidence as the letters themselves.

ARTICLE IX. — *Disqualified Judges and Transfers of Administrators.*

If judge disqualified to act as such by reason of interest, etc., he shall not admit will to probate.

SEC. 109. No probate court shall admit to probate any will, or grant letters testamentary or of administration, in any case where the judge thereof is interested as next of kin to the decedent, or as a legatee or devisee, under the will, or when he is named as executor or trustee in the will, or as a witness thereto, or is in any other manner interested or disqualified from acting.

If probate judge disqualified to act he must transfer proceedings to court of an adjoining county.

SEC. 110. When a petition is filed in the probate court, praying for admission to probate of a will, or for granting letters testamentary or of administration, or when proceedings are pending in the probate court for the settlement of an estate, and the presiding judge of the court is disqualified to act from any cause, upon his own or the motion of any person interested in the estate, he must make an order transferring the proceeding to the probate court of an adjoining county, and the clerk of the court ordering the transfer must transmit to the clerk of the court to which the proceeding is ordered to be transferred, a certified copy of the order, and all papers on file in his office in the proceeding; and thereafter the

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probate court to which the proceeding is transferred shall exercise the same authority and jurisdiction over the estate, and all matters relating to the administration thereof, as if it had original jurisdiction of the estate.

Certified copy of record in case of transfer.

SEC. 111. The transfer of a proceeding from one court to another, as provided for in the preceding section, shall not affect the right of any person to letters testamentary or of administration on the estate transferred, but the same persons are entitled to letters testamentary or of administration on the estate, in the order hereinbefore provided. If, before the administration is closed of any estate so transferred as herein provided, another person is elected or appointed and qualified as probate judge of the county wherein such proceeding was originally commenced, who is not disqualified to act in the settlement of the estate, and the causes for which the proceeding was transferred no longer exist, any person interested in the estate may have the proceeding returned to the court from which it was originally transferred, by filing a petition setting forth these facts, and moving the court therefor.

Right of persons to administer not affected by transfer.

When proceeding transferred may be sent back to county where same originated.

Petition and motion for re-transfer.

SEC. 112. On hearing the motion, if the facts required by the preceding section to be set out in the petition are satisfactorily shown, and it further appears to the court that the convenience of parties interested would be promoted by such change, the judge must make an order transferring the proceeding back to the probate court where it was originally commenced; and the clerk of the court ordering the transfer must transmit to the clerk of the court in which the proceeding was originally commenced, a certified copy of the order, and all the original papers on file in his office in the proceeding, and the court where the proceeding was orignally commenced shall thereafter have jurisdiction and power to make all necessary orders and decrees to close up the administration of the estate.

When re-transfer to be ordered.

Order to transfer proceeding to original county.

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ARTICLE X.—*Removal and Suspension in Certain Cases.*

SEC. 113. Whenever the probate judge has reason to believe, from his own knowledge or from credible information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle, the property of the estate committed to his charge, or has committed, or is about to commit, a fraud upon the estate, or is incompetent to act, or has permanently removed from the territory, or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the court, suspend the powers of such executor or administrator until the matter is investigated.

Cases in which it becomes the duty of probate judge to suspend an executor or administrator.

SEC. 114. When such suspension is made, notice thereof must be given to the executor or administrator, and he must be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court is satisfied that there exists cause for his removal, his letters must be revoked, and letters of administration granted anew, as the case may require.

Notice and citation to be issued executor or administrator in case he is suspended.

SEC. 115. At the hearing any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed, to which the executor or administrator may demur or answer, as hereinbefore provided. The issues raised must be heard and determined by the court.

Hearing of proceeding to revoke letters of executor or administrator.

SEC. 116. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the territory, notice may be given him of the pendency of the proceedings, by publication, in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served.

Of notice to executor or administrator to revoke in case of his removal from territory or has absconded or conceals himself.

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In proceedings under preceding sections, the executor or administrator may be attached and compelled to answer under oath.

SEC. 117. In the proceedings authorized by the preceding sections of this article for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and, upon his refusal so to do, may commit him until he obey, or may revoke his letters, or both.

CHAPTER IV.

ARTICLE I.— *Inventory, Appraisement, and Possession of Estate.*

Inventory and appraisement of estate to be made and returned to probate court.

SEC. 118. Every executor or administrator must make and return to the court, at its first term after his appointment, a true inventory and appraisement of all the estate of the decedent, including the homestead, if any, which has come to his possession or knowledge.

Court to appoint appraisers.

SEC. 119. To make the appraisement, the probate judge or court must appoint three disinterested persons (any two of whom may act), who are entitled to receive a reasonable compensation for their services, not to exceed five dollars per day, to be allowed by the court or judge. The appraisers must, with the inventory, file a verified account of their services and disbursements. If only one day's services are charged, the bill need not be sworn to.

Compensation and report of appraisers.

If any part of the estate is in any other county than that in which letters are issued, appraisers thereof may be appointed, either by the probate judge having jurisdiction of the estate or by the probate judge of such other county, on request of the judge having jurisdiction.

Oath of appraisers.

SEC. 120. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, must take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property which is exhibited to them, according to the best of their knowledge and ability. They must then proceed to estimate and appraise the property. Each article must be set

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down separately, with the value thereof in dollars and cents, in figures, opposite the articles respectively. The inventory must contain all the estate of the decedent, real and personal, a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon (if any), with their dates, and the sum which, in the judgment of the appraisers, may be collected on each debt, interest, or security. The inventory must show, so far as the same can be ascertained by the executor or the administrator, what portion of the property is community property, and what portion is the separate property of the decedent.

Duties of appraisers.

Inventory as to community and separate property.

SEC. 121. The inventory must also contain an account of all moneys belonging to the decedent which have come to the hands of the executor or administrator; and if none, the fact must be so stated in the inventory. If the whole estate consists of money, there need not be an appraisement, but an inventory must be made and returned as in other cases.

Inventory as to moneys of deceased.

SEC. 122. The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him, but the claim must be included in the inventory, and the executor is liable for the same as for so much money in his hands when the debt or demand becomes due.

Claim of decedent against executor must be included in inventory.

SEC. 123. The discharge or bequest in a will of any debt or demand of the testator against the executor named, or any other person, is not valid against the creditors of the decedent, but is a specific bequest of the debt or demand. It must be included in the inventory, and, if necessary, applied in the payment of his debts; if not necessary for that purpose, it must be paid in the same manner and proportion as other specific legacies.

Of the discharge by testator in will of debt against executor.

SEC. 124. The inventory must be signed by the appraisers, and the executor or administrator must take

Inventory to be signed by appraisers.

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and subscribe an oath, before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge and possession, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath must be endorsed upon or annexed to the inventory.

Oath of executor or administrator thereto.

SEC. 125. If an executor or administrator neglects or refuses to return the inventory within the time prescribed, or within such further time, not exceeding two months, which the court or judge shall, for reasonable cause, allow, the court may, upon notice, revoke the letters testamentary or of administration, and the executor or administrator is liable on his bond for any injury to the estate, or any person interested therein, arising from such failure.

Penalty if executor or administrator neglect or refuse to return inventory.

SEC. 126. Whenever property not mentioned in an inventory that is made and filed comes to the possession or knowledge of an executor or administrator, he must cause the same to be appraised in the manner prescribed in this article, and an inventory thereof to be returned within two months after the discovery; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

Property not included in inventory coming into possession of executor or administrator to be appraised and returned.

SEC. 127. The executor or administrator is entitled to the possession of all the real and personal estate of the decedent, and to receive the rents and profits of the real estate, until the estate is settled, or until delivered over by order of the probate court to the heirs or devisees; and must keep in good tenantable repair all houses, buildings, and fixtures thereon which are under his control.

Estate of decedent to which executor or administrator is entitled.

The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real estate, or for the purpose of quieting the title to the same, against any one except the executor or administrator.

SEC. 128. Unless it satisfactorily appears to the pro-

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bate court that the rents, issues, and profits of the real estate for a longer period are necessary to be received by the executor or administrator, wherewith to pay the debts of the decedent, or that it will probably be necessary to sell the real estate for the payment of such debts, at the end of ten months from the first publication of the notice to creditors the court must direct the executor or administrator to deliver possession of all the real estate to the heirs at law or devisees.

When court to order real estate delivered to heirs.

ARTICLE II.—*Embezzlement and Surrender of Property of the Estate.*

SEC. 129. If any person, before the granting of letters testamentary or of administration, embezzles or alienates any of the moneys, goods, chattels, or effects of a decedent, he is chargeable therewith, and liable to an action by the executor or administrator of the estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Liability of person embezzling or alienating estate of decedent before letters granted.

SEC. 130. If any executor, administrator, or other person interested in the estate of a decedent, complains to the probate judge, on oath, that any person is suspected to have concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of, or tend to disclose, the right, title, interest, or claim of the decedent to any real or personal estate, or any claim or demand, or any last will, the judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person is not in the county where letters have been granted, he may be cited and examined, either before the probate court of the county where he is found, or before the court issuing the citation. But, if, in the latter case, he appears, and is found innocent, his necessary expenses must be allowed him out of the estate.

Citation and examination of person charged with embezzling, or having in possession property of decedent.

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SEC. 131. If the person so cited refuse to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matter of the complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court, or is discharged according to law. If, upon such examination, it appears that he has concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, tending to disclose the right, title, interest, or claim of the decedent to any real or personal estate, claim, or demand, or any last will of the decedent, the probate court may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to the county jail, there to remain until the order is complied with, or he is discharged according to law. And all such interrogatories and answers must be in writing, signed by the party examined, and filed in the probate court.

If person cited under preceding section refuse to appear (and is caught), may be imprisoned.

Order of court requiring guilty party to disclose his knowledge.

The order for such disclosure made upon such examination is *prima facie* evidence of the right of such administrator to such property, in any action brought for the recovery thereof; and any judgment recovered therein must be for double the value of the property as assessed by the court or jury, or for return of the property, and damages in addition thereto equal to the value of such property.

Evidence of order for disclosure.

In addition to the examination of the party, witnesses may be produced and examined on either side.

Witnesses examined on either side.

SEC. 132. The probate judge, upon the complaint, on oath, of an executor or administrator, may cite any person who has been entrusted with any part of the estate of the decedent, to appear before such court, and require him to render a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other property or

Person who has been entrusted with part of estate of decedent may be cited to account.

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papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear and render such account, the court may proceed against him as provided in the preceding section.

CHAPTER V.

ARTICLE I.—*Of the Provision for the Support of the Family.*

Rights of widow and minor children.

SEC. 133. When a person dies, leaving a widow or minor children, the widow or children, until letters are granted and the inventory is returned, are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent; and are also entitled to a reasonable provision for their support, to be allowed by the probate judge.

Property set apart for surviving husband or wife, or minor children.

SEC. 134. Upon the return of the inventory, or at any subsequent time during the administration, the court or probate judge may, on his own motion or on petition therefor, set apart for the use of the surviving husband or wife or the minor children of the decedent, all property exempt from execution, including the homestead selected, designated, and recorded. If none has been selected, designated, and recorded, the judge of the court must select, designate, set apart, and cause to be recorded a homestead, for the use of the persons hereinbefore named, in the manner provided in Article II. of this chapter, out of the real estate belonging to the decedent.

Of additional allowance for widow and minor children.

SEC. 135. If the amount set apart be insufficient for the support of the widow and children, or either, the probate court or judge must make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, must not be longer than one year after granting letters testamentary or of administration.

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SEC. 136. Any allowance made by the court or judge in accordance with the provisions of this article, must be paid in preference to all other charges, except funeral charges and expenses of administration; and any such allowance, whenever made, may, in the discretion of the court or judge, take effect from the death of the decedent.

Preference given to allowance of family.

SEC. 137. When property is set apart for the use of the family, in accordance with the provisions of this chapter, if the decedent left a widow or surviving husband and no minor child, such property is the property of the widow or surviving husband. If the decedent left also a minor child or children, the one-half of such property shall belong to the widow or surviving husband, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow or surviving husband, the whole belongs to the minor child or children.

When property set apart to become property of surviving husband or wife, or divided with minor child or children.

SEC. 138. If, on the return of the inventory of the estate of an intestate, it appears that the value of the whole estate does not exceed the sum of fifteen hundred dollars, the probate court, by a decree for that purpose, must assign for the use and support of the widow and minor child or children, if there be a widow or minor child, and if no widow, then for the children, if there are any, the whole of the estate, after the payment of the expenses of his last illness, funeral charges, and expenses of the administration, and there must be no further proceedings in the administration, unless further estate be discovered; and when it so appears that the value of the whole estate does not exceed the sum of three thousand dollars, it is in the discretion of the probate court to dispense with the regular proceedings, or any part thereof, prescribed in this title, and there must be had a summary administration of the estate, and an order of distribution thereof at the end of six months after the issuing of letters. The notice to creditors must be given to present their claims within four months after

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the first publication of such notice, and those not so presented are barred as in other cases.

If widow have separate property children to have her half set apart.

SEC. 139. If the widow has a maintenance derived from her own property, equal to the portion set apart to her by the preceding sections of this article, the whole property so set apart, other than her half of the homestead, must go to the minor children.

ARTICLE II.—*Of the Homestead.*

Homestead—in whom vested on death of husband or wife.

SEC. 140. If the homestead selected by the husband and wife, or either of them, during their coverture, and recorded while both were living, was selected from the community property, it vests, on the death of the husband or wife, absolutely in the survivor. If the homestead was selected from the separate property of either husband or wife, it vests, on the death of the person from whose property it was selected, in his or her heirs, subject to the power of the probate court to assign it for a limited period to the family of the decedent. In either case it is not subject to the payment of any debt or liability contracted by or existing against the husband and wife, or either of them, previous to or at the time of the death of such husband or wife, except as provided in the civil code.

When probate court to set off homestead to persons entitled to same.

SEC. 141. If the homestead, selected and recorded prior to the death of the decedent, be returned in the inventory appraised at not exceeding two thousand five hundred dollars in value, or was previously appraised as provided in the civil code, and such appraised value did not exceed that sum, the probate court must, by order, set it off to the persons in whom title is vested by the preceding section. If there be subsisting liens or incumbrances on the homestead, the claims secured thereby must be presented and allowed as other claims against the estate. If the funds of the estate be adequate to pay all claims allowed against the estate, the claims so secured must be paid out of such funds; if the funds of the estate be not sufficient for that purpose, the claims

Payment of claims or liens against homestead.

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so secured shall be paid proportionally with other claims allowed, and the liens or incumbrances on the homestead shall only be enforced against the homestead for any deficiency remaining after such payment.

If homestead exceed a certain value same may be divided, if same can be done without injury to the premises.

SEC. 142. If the homestead, as selected and recorded, be returned in the inventory appraised at more than two thousand five hundred dollars, the appraisers must, before they make their return, ascertain and appraise the value of the homestead at the time the same was selected, and if such value exceed two thousand five hundred dollars, or if the homestead was appraised as provided in the civil code, and such appraised value exceeded that sum, the appraisers must determine whether the premises can be divided without any material injury, and if they find that they can be thus divided, they must admeasure and set apart to the parties entitled thereto such portion of the premises, including the dwelling house, as will amount in value to the sum of two thousand five hundred dollars, and make report thereof, giving the metes, bounds, and full description of the portion set apart as a homestead. If the appraisers find that the premises exceeded in value, at the time of their selection, the sum of two thousand five hundred dollars, and that they cannot be divided without material injury, they must report such finding, and thereafter the court may make an order for the sale of the premises and the distribution of the proceeds to the parties entitled thereto.

If homestead cannot be divided without injury, same may be sold and proceeds distributed.

Action and report of appraisers.

SEC. 143. Any two of the appraisers concurring may discharge the duties imposed upon the three, and make the report. A dissenting report may be made by the third appraiser. The report must state fully the acts of the appraisers. Both reports may be heard and considered by the court in determining a confirmation or rejection of the majority report, but the minority report must in no case be confirmed.

When report of appraisers filed, objections thereto may be heard by court.

SEC. 144. When the report of the appraisers is filed the court must set a day for hearing any objections thereto from any one interested in the estate. Notice of

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the hearing must be given for such time and in such manner as the court may direct. If the court be satisfied that the report is correct, it must be confirmed, otherwise rejected. In case the report is rejected, the court may appoint new appraisers to examine and report upon the homestead, and similar proceedings may be had for the confirmation or rejection of their report as upon the first report.

When new appraisers appointed.

SEC. 145. The costs of all proceedings in the probate court provided for in this chapter, must be paid by the estate, as expenses of administration. Persons succeeding, by purchase or otherwise, to the interests, rights, and title of successors to homesteads, or to the right to have homesteads set apart to them, as in this chapter provided, have all the rights and benefits conferred by law on the persons whose interests and rights they acquire.

Of costs under this chapter.

SEC. 146. A certified copy of every final order made in pursuance of this article, by which a report is confirmed, property assigned, or sale confirmed, must be recorded in the office of the recorder of the county where the homestead property is situated.

Copy of orders made in pursuance of this article to be recorded.

CHAPTER VI.—OF CLAIMS AGAINST THE ESTATE.

SEC. 147. Every executor or administrator must, immediately after his appointment, cause to be published in some newspaper of the county, if there be one (if not, then in such newspaper as may be designated by the court), a notice to the creditors of the deceased, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice. Such notice must be published as often as the judge or court shall direct, but not less than once a week for four successive weeks; the court or judge may also direct additional notice by publication or posting. In case such executor or administrator resign or is removed before the time expressed in the notice, his successor must give notice for only the unexpired time allowed for such presentation.

Notice for presentation of claims against estate.

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Time in which claims to be presented.

SEC. 148. The time expressed in the notice must be ten months after its first publication when the estate exceeds in value the sum of ten thousand dollars, and four months when it does not.

Proof of posting notices to be filed.

SEC. 149. After notice is given as required by the preceding section, a copy thereof, with the affidavit of due publication, or of publication and posting, must be filed; and upon such affidavit or other testimony to the satisfaction of the court, an order or decree showing that due notice to the creditors has been given, and directing that such order or decree be entered in the minutes and recorded, must be made by the court.

Order of court showing notice has been given.

If claim not presented according to notice, same barred.

SEC. 150. If a claim arising upon a contract heretofore made be not presented within the time limited in the notice, it is barred forever, except as follows: If it be not then due, or if it be contingent, it may be presented within one month after it becomes due or absolute; if it be made to appear by the affidavit of the claimant, to the satisfaction of the executor or administrator and the probate judge, that the claimant had no notice, as provided in this chapter, by reason of being out of the territory, it may be presented any time before a decree of distribution is entered. A claim for a deficiency remaining unpaid after a sale of property of the estate mortgaged or pledged must be presented within one month after such deficiency is ascertained. All claims arising upon contracts hereafter made, whether the same be due, not due, or contingent, must be presented within the time limited in the notice; and any claim not so presented is barred forever: *Provided, however*, That when it is made to appear by the affidavit of the claimant, to the satisfaction of the executor or administrator and the probate judge, that the claimant had no notice, as provided in this chapter, by reason of being out of the territory, it may be presented at any time before a decree of distribution is entered.

Exception.

Claim for deficiency.

Claims arising upon contract.

SEC. 151. Every claim which is due when presented o the administrator must be supported by the affidavit

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Affidavit and proof in support of claim.

of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no set-offs to the same to the knowledge of the claimant or affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reasons why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate be insolvent, no greater rate of interest shall be allowed upon any claim after the first publication of notice to creditors than is allowed on judgments obtained in the district court.

Interest on claim against insolvent estate.

SEC. 152. Any probate judge may present a claim against the estate of a decedent for allowance, to the executor or administrator thereof; and if the executor or administrator allows the claim, he must, in writing, designate some probate judge of an adjoining county, who, upon the presentation of such claim to him, is vested with the same power to allow or reject it as he would have if the will had been proved or administration granted in his own county; and the probate judge presenting such claim, in case of its rejection by the executor or administrator, or by such probate judge as shall have acted upon it, has the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

Proceeding in case a probate judge present claim against estate.

SEC. 153. When a claim, accompanied by the affidavit required in this chapter, is presented to the executor or administrator, he must endorse thereon his allowance or rejection, with the day and date thereof. If he allows the claim, it must be presented to the probate judge for his approval, who must, in the same manner, endorse upon it his allowance or rejection. If the executor or administrator or the judge refuse or neglect

Endorsement of claim when presented.

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to endorse such allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect is equivalent to a rejection on the tenth day; and if the presentation be made by a notary, the certificate of such notary, under seal, is *prima facie* evidence of such presentation and rejection. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same is presented in time, though acted upon by the executor or administrator and by the judge after the expiration of such time. If the claim be payable in a particular kind of money or currency, it shall, if allowed, be payable only in such money or currency.

Kind of money in which claim paid.

SEC. 154. Every claim allowed by the executor or administrator and approved by the probate judge, or a copy thereof, as hereinafter provided, must, within thirty days thereafter, be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim is founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited if demanded, unless it is lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim or any part thereof is secured by a mortgage or other lien, which has been recorded in the office of the recorder of the county in which the land affected by it lies, in which case it is sufficient to describe the mortgage or lien and refer to the date, volume, and page of its record.

Claim, when allowed to be filed and paid.

If claim founded on a written obligation, same or copy filed.

In case claim founded on lien.

If in any case the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed in court, he may withdraw the same when a copy thereof has been already or is then attached to his claim. A brief description of the claim filed must be entered by the clerk in the register,

Claimant may withdraw original voucher and file copy.

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Description of claim entered by clerk.

showing the name of the claimant, the amount and character of the claim, rate of interest, and date of allowance.

Limitation in which suit may be brought in case claim rejected.

SEC. 155. When a claim is rejected, either by the executor or administrator or the probate judge, the holder must bring suit in the proper court against the executor or administrator, within three months after date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim is forever barred.

If claim barred not to be allowed.

SEC. 156. No claim must be allowed by the executor or administrator, or by the probate judge, which is barred by the statute of limitations. When a claim is presented to the probate judge for his allowance, he may, in his discretion, examine the claimant and others, on oath, and hear any other legal evidence touching the validity of the claim.

Probate judge may examine into claim.

Claim to be first presented to the executor or administrator.

SEC. 157. No holder of any claim against an estate shall maintain any action thereon, unless the claim is first presented to the executor or administrator.

If vacancy in administration limitation not to run.

SEC. 158. The time during which there shall be a vacancy in the administration must not be included in any limitations herein prescribed.

Claim in suit against decedent at time of death must be presented for allowance against estate.

SEC. 159. If an action is pending against the decedent at the time of his death, the plaintiff must in like manner present his claim to the executor or administrator, for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentation required.

Amount allowed must be endorsed on claim.

SEC. 160. Whenever any claim is presented to an executor or administrator, or to the probate judge, and he is willing to allow the same in part, he must state in his endorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action therefor brought against the executor or administrator, unless he recovers a greater amount than that offered to be allowed.

Costs in case claimant refuse to accept allowance.

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SEC. 161. A judgment rendered against an executor or administrator upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and the probate judge, and the judgment must be that the executor or administrator pay in due course of administration the amount ascertained to be due. A certified transcript of the judgment must be filed in the probate court. No execution must issue upon such judgment, nor shall it create any lien upon the property of the estate or give to the judgment creditor any priority of payment.

Effect of a judgment against estate.

SEC. 162. When judgment has been rendered for or against the testator (or) intestate in his lifetime, no execution shall issue thereon after his death, except as provided in section —. A judgment against the decedent for the recovery of money must be presented to the executor or administrator, like any other claim. If execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof; and the officer making the sale must account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime, may redeem any real estate of the decedent from any sale under foreclosure or execution, in like manner and with like effect as if the judgment debtor were still living.

In case judgment was rendered against decedent in his lifetime.

If execution was levied on estate of decedent before his death property to be sold.

Right of redemption.

SEC. 163. A judgment rendered against a decedent, dying after verdict or decision on an issue of fact, but before judgment is rendered thereon, is not a lien on the real property of the decedent, but is payable in due course of administration.

If decedent die after verdict, but before judgment, the judgment not a lien on estate.

SEC. 164. If the executor or administrator doubts the correctness of any claim presented to him, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the probate judge; upon filing the agreement and approval of the probate judge in the office of

Executor or administrator may arbitrate claim.

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the clerk of the district court for the county in which the letters testamentary or of administration were granted, the clerk must, either in vacation or in term, enter a minute of the order referring the matter in controversy to the person so selected; or, if the parties consent, a reference may be had to the probate court, and the report of the referee, if confirmed, establishes or rejects the claim the same as if it had been allowed or rejected by the executor or administrator and the probate judge.

Arbitrator to hear controversy and report to court.

SEC. 165. The referee must hear and determine the matter and make his report thereon to the court in which his appointment is entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, be entitled to the same compensation, and subject to the same control, as in other cases of reference. The court may remove the referee, appoint another in his place, set aside or confirm his report, and adjudge costs, as in actions against executors or administrators, and the judgment of the court thereon shall be as valid and effectual in all respects as if the same had been rendered in a suit commenced by ordinary process.

Court may appoint new arbitrator.

Liability of executor or administrator for costs.

SEC. 166. When a judgment is recovered with costs against any executor or administrator, he shall be individually liable for such costs; but they must be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

If executor or administrator a creditor of decedent, must present claim to court.

SEC. 167. If the executor or administrator is a creditor of the decedent, his claim, duly authenticated by affidavits, must be presented for allowance or rejection to the probate judge, and its allowance by the judge is sufficient evidence of its correctness, and it must be paid as other claims, in due course of administration. If, however, the probate judge rejects the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the probate judge, who may appoint an attorney at the expense of the estate to defend the action. If the claimant recovers no

Proceeding in case probate court reject claim of executor or administrator.

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judgment, he must pay all costs, including defendant's fees.

If executor or administrator neglect to give notice as the law directs, his appointment revoked.

SEC. 168. If any executor or administrator neglects for two months after his appointment to give notice to creditors, as prescribed by this chapter, the court must revoke his letters, and appoint some other person in his stead, equally or the next in order entitled to the appointment.

List of claims against estate returned with inventory.

SEC. 169. At the same term at which he is required to return his inventory, the executor or administrator must also return a statement of all claims against the estate which have been presented to him, if so required by the court; and from term to term thereafter he must present a statement of claims subsequently presented to him. In all such statements he must designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

SEC. 170. If there be any debt of the decedent bearing interest, whether presented or not, the executor or administrator may, by order of the court, pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid. This section does not apply to existing debts, unless the creditor consent to accept the amount.

CHAPTER VII.

ARTICLE I.—*Sales in General.*

Property of deceased liable for his debts.

SEC. 171. All the property of a decedent shall be chargeable with the payment of the debts of the deceased, the expenses of administration, and the allowance to the family, except as otherwise provided in this code and in the civil code. And the said property, personal and real, may be sold as the court may direct, in the manner prescribed in this chapter. There shall be

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no priority as between personal and real property for the above purposes.

When executor or administrator may borrow money to pay debts of estate.

SEC. 172. In all cases the executor or administrator of an estate, instead of selling the property of the estate to pay the charges and demands against the same, may borrow money at the lowest rate of interest at which it may be had, and for such length of time the court may allow, to pay such claims, when it shall be made to appear to the court, by petition and evidence, that an immediate sale of the property of the estate will be detrimental to the heirs, devisees, legatees, or other persons having an interest therein; and in such case the estate shall be chargeable with the payment of such sum so borrowed and interest thereon. Such petition may be made by the executor or administrator, or by any one of the heirs of the deceased, or other person interested in the estate. Notice shall be given as follows: If by the executor or administrator, to all the heirs, devisees, legatees, residing in the territory; and if by any heir, devisee, or legatee, to the administrator or executor, and to all other heirs, devisees, and legatees residing in the territory, which notice shall be given as notice to creditors by an executor or administrator is required by the provisions of this act.

Petition in such case.

Of sales of decedent's estate.

SEC. 173. No sale of any property of an estate of a decedent is valid unless made under order of the probate court, except as otherwise provided in this chapter. All sales must be reported under oath, and confirmed by the probate court, before the title to the property sold passes.

Petition for order of sale

SEC. 174. All petitions for orders of sale must be in writing, setting forth the facts showing the sale to be necessary, and, upon the hearing, any person interested in the estate may file his written objections, which must be heard and determined. A failure to set forth the facts showing the sale to be necessary, will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing the necessity be stated in the order directing the sale.

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SEC. 175. When it appears to the court that the estate is insolvent, or that it will require a sale of all the property of the estate, of every character, to pay the family allowance, expenses of administration, and debts, there need be but one petition filed, but one order of sale made, and but one sale had, except in the case of perishable property, which may be sold as provided in section —. The probate court, when a petition for the sale of any property for any of the purposes herein named is presented, must inquire fully into the probable amount required to make all such payments, and, if there be no more estate than sufficient to pay the same, may require but one proceeding for the sale of the entire estate. In such case the petition must set forth substantially the facts required by section —.

When only one order of sale required.

Case in which the whole estate may be ordered sold.

ARTICLE II.—*Sales of Personal Property.*

SEC. 176. At any time after receiving letters the executor, administrator, or special administrator may apply to the court or judge, and obtain an order to sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The order for the sale may be made without notice, but the executor, administrator, or special administrator is responsible for the property, unless, after making a sworn return and on a proper showing, the court shall approve the sale.

Petition by administrator to sell personal property.

Order for sale in such case.

SEC. 177. If claims against the estate have been allowed and a sale of property is necessary for their payment, or the expenses of administration, or for the payment of legacies, the executor or administrator may apply for an order to sell so much of the personal property as may be necessary therefor. Upon filing his petition, notice of at least five days must be given of the hearing of the application, either by posting notices or by advertising. He may also make a similiar applica-

Petition to sell part of personal property to pay debts and legacies.

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tion, either in vacation or term, from time to time, so long as any personal property remains in his hands and sale thereof is necessary. If it appear for the best interest of the estate, he may, at any time after filing the inventory, in like manner, and after giving like notice, apply for and obtain an order to sell the whole of the personal property belonging to the estate, whether necessary to pay debts or not.

Interests that may be sold as personal property.

SEC. 178. Partnership interest or interests belonging to any estate by virtue of any partnership formerly existing, interests in personal property pledged, and choses in action, may be sold in the same manner as other personal property, when it appears to be for the best interest of the estate. Before confirming the sale of any partnership interest, whether made to the surviving partner or to any other person, the court or judge must carefully inquire into the condition of the partnership affairs, and must examine the surviving partner, if in the county and able to be present in court.

Duty of court before confirming sale of partnership interests.

When court must order sale of property.

SEC. 179. If it appears that a sale is necessary for the payment of debts or the family allowance, or for the best interest of the estate and the persons interested in the property to be sold, whether it is or is not necessary to pay the debts or family allowance, the court or judge must order it to be made. In making orders and sales for the payment of debts or family allowance, such articles as are not necessary for the support and subsistence of the family of the decedent, or are not especially bequeathed, must be first sold, and the court or judge must so direct.

Mode of sale of personal property.

SEC. 180. The sale of personal property must be made at public auction, for such money or currency as the court may direct, and after public notice given for at least ten days, by notices posted in three public places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a brief description of the property to be sold, unless, for good reasons shown, the probate court or judge orders a pri-

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vate sale or a shorter notice. Public sales of such property must be made at the court house door, or at the residence of the decedent, or at some other public place, but no sale shall be made of any personal property which is not present at the time of sale, unless the court otherwise order. When a sale of property of the estate is necessary to pay the allowance of the family, or the debts outstanding against the decedent, or the debts, expenses, or charges of administration, or legacies, the executor or administrator may also sell any real as well as personal property of the estate, for that purpose, upon the order of the probate court; and an application for the sale of real property may also embrace the sale of personal property.

Notice of sale.

Sale by executor or administrator to pay debts or legacies.

ARTICLE III.—*Summary Sales of Mines and Mining Interests.*

SEC. 181. When it appears from the inventory of the estate of any decedent that his estate consists, in whole or in part, of mines or interests in mines, or of shares, interests, or stocks in a mining corporation, such mines, interests, stocks, or shares may be sold under the order of the probate court having jurisdiction of the estate, as hereinafter provided.

Sale of mining interests.

SEC. 182. The executor, administrator, or any heir at law or creditor of the estate, any partner or member of any mining company in which interests or shares are held or owned by the estate, may file in the probate court a petition, in writing, setting forth the general facts of the estate being then in due course of administration, and particularly describing the mine, interest, or shares, which it is desired to sell, and particularly the condition and situation of the mines or mining interests, or of the mining company or corporation in which such interests or shares are held, and the grounds upon which the sale is asked to be made.

Petition for sale of mining interests of decedent.

SEC. 183. Upon the presentation of such petition the probate judge must make an order directing all persons

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Order to parties in interest to show cause why mining interests should not be sold.

interested to appear before him at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mines, mining interests, shares, or stocks, as are set forth in the petition and belonging to the estate. A copy of the order to show cause must be personally served on all persons interested in the estate at least ten days before the time appointed for hearing the petition, or published at least four successive weeks in such newspaper as the court shall specify. If all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

Upon whom order served.

SEC. 184. If, upon hearing the petition, it appears to the satisfaction of the probate judge that it is to the interest of the estate that such mining property or interests of the estate should be sold, or if it appears to his satisfaction that an immediate sale is necessary in order to secure the just rights or interests of the mining partners or tenants in common, in which such shares, stocks, or property are held, such probate judge must make an order authorizing the executor or administrator to sell such mining interests, mines, or shares, as hereinafter provided.

When probate judge to make order for sale of mining property.

SEC. 185. After the order of sale is made, all further proceedings for the sale of such mining property, and for the notice, report, and confirmation thereof, must be in conformity with the provisions of Article IV. of this chapter.

Proceedings under order for sale of mining interests.

ARTICLE IV.—*The Sale of Real Estate Interests Therein and Confirmation Thereof.*

When real estate may be sold.

SEC. 186. When the personal estate in the hands of the executor or administrator is exhausted, or insufficient to pay the allowance of the family, the debts outstanding against the decedent, and the debts, expenses, and charges of administration, the executor or administrator may sell the real estate for that purpose, upon the order of the probate court.

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SEC. 187. To obtain an order for the sale of real property he must present a verified petition to the probate court, or to the judge at chambers, setting forth the amount of personal property that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force for one year; the debts, expenses, and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general description of all the real property of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof, and whether the same be community or separate property; the names of the legatees and devisees, if any, and of the heirs of the decedent, so far as known to the petitioner. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the decree.

Petition for sale of real estate.

SEC. 188. If it appears to the court or judge from such petition that it is necessary to sell the whole or some portion of the real estate for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed, and an order thereupon made directing all persons interested in the estate to appear before the court, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

Order to show cause why real estate should not be sold.

SEC. 189. A copy of the order to show cause must be personally served on all persons interested in the estate, any general guardian of a minor so interested, and

Service of order to show cause.

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any legatee, or devisee, or heir of the decedent, provided they are residents of the county, at least ten days before the time appointed for hearing the petition, or be published four successive weeks in such newspaper in the county as the court or judge shall direct. If all persons interested in the estate join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with, and the hearing may be had at any time.

Hearing application to sell real estate.

SEC. 190. The probate court, at the time and place appointed in such order, or at such other time to which the hearing may be postponed, upon satisfactory proof of personal service or publication of a copy of the order, by affidavit or otherwise, if the consent, in writing, to such sale, of all parties interested is not filed, must proceed to hear the petition, and hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application. All claims against the decedent not before presented, if the period of presentation has not elapsed, may be presented and passed upon at the hearing.

Attendance and examination of witnesses.

SEC. 191. The executor, administrator, and witnesses may be examined on oath by either party, and process to compel them to attend and testify may be issued by the probate judge, in the same manner and with like effect as in other cases.

When court may order whole of real estate sold.

SEC. 192. If it appears necessary to sell a part of the real estate, and that by a sale thereof the residue of the estate, real or personal, or some specific part thereof, would be greatly injured, or diminished in value, or subjected to expense, or rendered unprofitable, or that after any such sale the residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interest of all concerned that the same should be sold, the court may authorize the sale of the whole estate or any part thereof necessary and for the best interests of all concerned.

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SEC. 193. If the court is satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for any of the causes mentioned in this article, or if such sale be assented to by all the persons interested, an order must be made to sell the whole, or so much and such parts of the real estate described in the petition as the court shall judge necessary or beneficial.

Order for sale of whole or part of real estate.

SEC. 194. The order of sale must describe the lands to be sold and the terms of sale, which may be for cash or on a credit not exceeding one year, payable in gross or installments, and in such kind of money, with interest, as the court may direct. The land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs. If it appears that any of such real estate has been devised and not charged in such devise with the payment of debts or legacies, the court must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at public auction, unless in the opinion of the court it would benefit the estate to sell the whole or some part of such real estate at private sale. The court may, if the same is asked for in the petition, order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for the estate.

Order of sale.

If the executor or administrator neglects or refuses to make a sale under the order and as directed therein, he may be compelled to sell, by order of the court, made on motion, after due notice, by any party interested.

SEC. 195. If the executor or administrator neglects to apply for an order of sale when it is necessary, any person may make application therefor, in the same manner as the executor or administrator, and notice thereof must be given to the executor or administrator before the hearing. The petition of such applicant must con-

If executor or administrator neglect to apply for order of sale, other person may.

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What petition in such case to contain.

tain as many of the matters in section 179 as he can ascertain, and the decree of the sale must fix the period of time within which the executor or administrator must make the sale.

SEC. 196. When a sale is ordered, and is to be made at public auction, notice of the time and place of sale must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, but if none, then in such paper as the court may direct, for three weeks successively next before the sale; the lands and tenements to be sold must be described with common certainty in the notice.

Notice of sale at public auction.

SEC. 197. Sales at public auction must be made in the county where the land is situated, but when the land is situated in two or more counties it may be sold in either. The sale must be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and must be made on the day named in notice of sale, unless the same is postponed.

Place of sale.

Hours of sale.

SEC. 198. When a sale of real estate is ordered to be made at private sale, notice of the same must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, if none, then in such paper as the court may direct, for two weeks successively next before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice, and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, or delivered to the executor or administrator personally, or may be filed in the office of

Notice when sold at private sale.

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the clerk of the probate court, to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale.

If it is shown that it will be for the best interest of the estate, the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order.

Confirmation of sale of real estate sold at private sale.

SEC. 199. No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent of the appraised value thereof, nor unless such real estate has been appraised within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers must be appointed and they must make an appraisement thereof in the same manner as in the case of an original appraisement of an estate. This may be done at any time before the sale or confirmation thereof.

If sold on credit security to be taken

SEC. 200. The executor or administrator must, when the sale is made upon a credit, take the notes of the purchaser for the purchase money, with a mortgage on the property to secure their payment.

Report of sale to be made and filed in probate court.

SEC. 201. The executor or administrator, after making any sale of real estate, must make a return of his proceedings to the probate court, which must be filed in the office of the clerk at any time subsequent to the sale, either in term or vacation. If the sale is made at public auction and the return made and filed on or before the first day of the next term thereafter, no notice is required of such return, or of the hearing thereof, but the hearing may be had upon the first day of the term, or any subsequent day to which the same may be postponed. If the sale be not made at public auction, or, if made at public auction, a hearing upon the return of

Hearing of report of sale.

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proceedings be asked for in the return, or is brought on for a hearing upon a day before the first day of the next term after such sale, the court or judge must fix the day for the hearing, of which notice of at least ten days must be given by the clerk, by notices posted in three public places in the county, or by publication in a newspaper, or both, as the court or judge shall direct, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. Upon the hearing the court must examine the return and witnesses in relation to the same, and if the proceedings were unfair, or the sum bid disproportionate to the value, and that a sum exceeding such bid, at least ten per cent exclusive of the expenses of a new sale, may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given, and the sales in all respects conducted as if no previous sale had taken place. If an offer of ten per cent more in amount than that named in the return be made to the court in writing by a responsible person, it is in the discretion of the court to accept such offer and confirm the sale to such person, or to order a new sale.

Notice of hearing.

Duty of court upon hearing.

Order of resale.

When in discretion of court to confirm sale.

SEC. 202. When return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation thereof, and may be heard thereon when the return is heard by the court or judge, and may produce witnesses in support of his objections.

Objections by person interested to confirmation of sale.

SEC. 203. If it appears to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, and that a greater sum as above specified cannot be obtained, or if the increased bid mentioned in section 201 be made and accepted by the court, the court must make an order confirming the sale and directing conveyances to be executed. The sale from that time is confirmed and valid, and a certified copy of the order confirming it and directing conveyances to be executed, must be recorded in the office of the recorder of the county

Order of court confirming sale.

When sale deemed valid.

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within which the land sold is situated. If, after the confirmation, the purchaser neglects or refuses to comply with the terms of sale, the court may, on motion of the executor or administrator, and after notice to the purchaser, order a re-sale to be made of the property. If the amount realized on such re-sale does not cover the bid and expenses of the previous sale, such purchaser is liable for the deficiency to the estate.

Proceeding if purchaser neglect to comply with terms of sale.

SEC. 204. Conveyances must thereupon be executed to the purchaser by the executor or administrator, and they must refer to the orders of the probate court authorizing and confirming the sale of the property of the estate, and directing the conveyances thereof to be executed, and to the record of the confirmation, in the office of the county recorder, either by the date of such recording or by the date, volume, and page of the record, and such references shall have the same effect as if the order were at large inserted in the conveyance. Conveyances so made convey all the right, title, interest, and estate of the decedent in the premises at the time of his death; if prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises other than or in addition to that of the decedent at the time of his death, such right, title, or interest also passes by such conveyance.

Of the conveyance to purchaser.

Of the title conveyed.

SEC. 205. Before any order is entered confirming the sale, it must be proved to the satisfaction of the court that notice was given of the sale as prescribed, and the order of confirmation must show that such proof was made.

What to be proven before order of confirmation is entered.

SEC. 206. If, at the time appointed for the sale, the executor or administrator deems it for the interest of all persons concerned therein that the same be postponed, he may postpone it from time to time, not exceeding in all three months.

Postponement of sale.

SEC. 207. In case of a postponement, notice thereof must be given by public declaration at the time and place first appointed for the sale, and if the postpone-

Notice in case of postponement of sale.

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ment be for more than one day, further notice must be given by posting notices in three or more public places in the county where the land is situated, or publishing the same, or both, as the time and circumstances will admit.

Will to be followed as to payment of debts and family expenses.

SEC. 208. If the testator makes provision by his will, or designates the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they must be paid according to such provision or designation, out of the estate thus appropriated, so far as the same is sufficient.

When property may be sold without order of probate court.

SEC. 209. When property is directed by the will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the probate court, and at either public or private sale, and with or without notice, as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale is confirmed by the court.

Report of sale in such case.

If will does not direct sufficient property sold, other property to be sold.

SEC. 210. If the provision made by the will, or the estate appropriated therefor, is insufficient to pay the debts, expenses of administration, and family expenses, that portion of the estate not devised or disposed of by the will, if any, must be appropriated and disposed of for that purpose, according to the provisions of this chapter.

Liability of property given legatees for debts of estate.

SEC. 211. The estate, real and personal, given by will to legatees or devisees, is liable for the debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies, but specific devises or legacies are exempt from such liability if it appears to the court necessary to carry into effect the intention of the testator, and there is other sufficient estate.

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Contribution by legatees or devisees for debts or expenses of estate.

SEC. 212. When an estate, given by will, has been sold for the payment of debts or expenses, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been taken therefor, and the probate court, when distribution is made, must, by decree for that purpose, settle the amount of the several liabilities and decree the amount each person shall contribute, and reserve the same from their distributive shares respectively for the purpose of paying such contribution.

Decree of court as to contribution.

Contract for purchase of lands made by decedent may be sold.

SEC. 213. If a decedent, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land and under such contracts may be sold, on the application of his executor or administrator, in the same manner as if he had died seized of such lands, and the same proceedings may be had for that purpose as are prescribed in this chapter for the sale of lands of which he died seized, except as hereinafter provided.

Provisions under which sale under preceding section to be made.

SEC. 214. The sale must be made subject to all payments that may thereafter become due on such contracts, and if there are any such the sale must not be confirmed by the probate judge until the purchasers execute a bond to the executor or administrator for the benefit and indemnity of himself and of the persons entitled to the interest of the decedent in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the probate judge shall approve.

Bond of purchaser under preceding section.

SEC. 215. The bond must be conditioned that the purchaser will make all payments for such land that become due after the date of the sale, and will fully indemnify the executor or administrator and the persons so entitled against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in such contract.

SEC. 216. Upon the confirmation of the sale the executor or administrator must execute to the purchaser

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Assignment of contract sold under sec. 213.

an assignment of the contract, which vests in the purchaser, his heirs and assigns, all the right, title, and interest of the estate, or of the persons entitled to the interest of the decedent, in the lands sold at the time of the sale, and the purchaser has the same rights and remedies against the vendor of such land as the decedent would have had if he were living.

Effect of assignment.

SEC. 217. When any sale is made by an executor or administrator, pursuant to the provisions of this chapter, of lands subject to any mortgage or other lien which is a valid claim against the estate of the decedent, and has been presented and allowed, the purchase money must be applied, after paying the necessary expenses of the sale, first, to the payment and satisfaction of the mortgage or lien, and the residue, if any, in due course of administration. The application of the purchase money to the satisfaction of the mortgage or lien must be made without delay, and the land is subject to such mortgage or lien until the purchase money has been actually so applied. No claim against any estate, which has been presented and allowed, is affected by the statute of limitations, pending the proceedings for the settlement of the estate.

Application of moneys received for property sold subject to any lien.

The purchase money, or so much thereof as may be sufficient to pay such mortgage or lien, with interest, and any lawful costs and charges thereon, may be paid into the probate court, to be received by the clerk thereof, whereupon the mortgage or lien upon the land must cease; and the purchase money must be paid over by the clerk of the court without delay, in payment of the expenses of the sale, and in satisfaction of the debt to secure which the mortgage or other lien was taken, and the surplus, if any, at once returned to the executor or administrator, unless, for good cause shown, after notice to the executor or administrator, the court otherwise directs.

SEC. 218. At any sale, under order of the probate court, of lands upon which there is a mortgage or lien,

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Holder of lien may purchase.

the holder thereof may become the purchaser, and his receipt for the amount due him from the proceeds of the sale is a payment *pro tanto*. If the amount for which he purchased the property is insufficient to defray the expenses and discharge his mortgage or lien, he must pay to the court or the clerk thereof an amount sufficient to pay such expenses.

Payments by holder of lien

Liability of executor or administrator in proceeding to sell property.

SEC. 219. If there is any neglect or misconduct in the proceedings of the executor in relation to any sale, by which any person interested in the estate suffers damage, the party aggrieved may recover the same in an action upon the bond of the executor or administrator, or otherwise.

Liability of executor or administrator for fraudulent sale of real estate.

SEC. 220. Any executor or administrator who fraudulently sells any real estate of a decedent, contrary to or otherwise than under the provisions of this chapter, is liable in double the value of the land sold, as liquidated damages, to be recovered in an action by the person having an estate of inheritance therein.

Limitation to recover estate sold under this chapter.

SEC. 221. No action for the recovery of any estate sold by an executor or administrator under the provisions of this chapter, can be maintained by any heir or other person claiming under the decedent, unless it be commenced within three years next after the sale. An action to set aside the sale may be instituted and maintained at any time within three years from the discovery of the fraud, or other grounds upon which the action is based.

Action to set aside sale.

Application of preceding section to persons laboring under disability to sue.

SEC. 222. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action first accrues, but all such persons may commence an action at any time within three years after the removal of the disability.

Report of sales by executor or administrator.

SEC. 223. When a sale has been made by an executor or administrator of any property of the estate, real or personal, he must return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglects to make such return he may be

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punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

Executor or administrator not to purchase at sale.

SEC. 224. No executor or administrator must, directly or indirectly, purchase any property of the estate he represents, nor must he be interested in any such sale.

CHAPTER VIII.—OF THE POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS, AND OF THE MANAGEMENT OF ESTATES.

Executor or administrator to take possession of all estate of decedent.

SEC. 225. The executor or administrator must take into his possession all the estate of the decedent, real or personal, and collect all debts due to the decedent or to the estate. For the purpose of bringing suits to quiet title or for partition of such estate, the possession of the executors or administrators is the possession of the heirs or devisees; such possession by the heirs or devisees is subject, however, to the possession of the executor or administrator for the purposes of administration, as provided in this title.

Actions by or against executors or administrators.

SEC. 226. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

Actions by executors or administrators for waste, trespass, etc.

SEC. 227. Executors and administrators may maintain actions against any person who has wasted, destroyed, taken or carried away, or converted to his own use, the goods of the testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the decedent in his lifetime.

Actions against executor or administrator for waste, trespass, etc.

SEC. 228. Any person, or his personal representatives, may maintain an action against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person,

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SEC. 229. When a partnership exists between the decedent, at the time of his death, and any other person, the surviving partner has the right to continue in possession of the partnership, and to settle its business, but the interest of the decedent in the partnership must be included in the inventory and be appraised and appropriated as other property. The surviving partner must settle the affairs of the partnership without delay, and account with the executor or administrator, and pay over such balances as may from time to time be payable to him in right of the decedent. Upon the application of the executor or administrator, the probate judge may, whenever it appears necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment, and the executor or administrator may maintain against him any action which the decedent could have maintained.

Rights and powers of surviving partner.

Surviving partner to settle partnership affairs and account.

Probate judge may compel surviving partner to account.

SEC. 230. An administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

Action on bond by an administrator.

SEC. 231. In actions by or against executors it is not necessary to join those as parties to whom letters were issued but who have not qualified.

Of joinder of executor or administrator who did not qualify.

SEC. 232. Whenever a debtor of a decedent is unable to pay all his debts, the executor or administrator, with the approbation of the probate court or judge, may compound with him and give him a discharge upon receiving a fair and just dividend of his effects. A compromise may also be authorized when it appears to be just and for the best interest of the estate.

When executor or administrator may compound with debtor of estate.

SEC. 233. When there is a deficiency of assets in the hands of an executor or administrator, and when the decedent in his lifetime has conveyed any real estate or any rights or interests therein with intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or has so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor

Recovery of property fraudulently disposed of by decedent.

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or administrator must commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights, or credits which have been so conveyed by the decedent in his lifetime, whatever may have been the manner of such fraudulent conveyance.

When suit to be brought under preceding section.

SEC. 234. No executor or administrator is bound to sue for such estate as is mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors, who must pay such part of the costs and expenses of the suit, or give such security to the executor or administrator therefor, as the probate judge shall direct.

Disposition of estate recovered.

SEC. 235. All real estate so recovered must be sold for the payment of debts, in the same manner as if the decedent had died seized thereof, upon obtaining an order therefor from the probate court, and the proceeds of all goods, chattels, rights, and credits so recovered must be appropriated in payment of the debts of the decedent, in the same manner as other property in the hands of the executor or administrator.

CHAPTER IX.—OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

Executor or administrator to complete contracts for sale of real estate.

SEC. 236. When a person who is bound by contract, in writing, to convey any real estate, dies before making the conveyance, and in all cases where such decedent, if living, might be compelled to make such conveyance, the probate court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto.

Petition for conveyance and notice of hearing.

SEC. 237. On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the probate court must appoint a time and place for hearing the peti-

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tion, at a regular term of the court, and must order notice thereof to be published at least four successive weeks before such hearing, in such newspaper in this territory as he may designate.

Hearing petition.

SEC. 238. At the time and place appointed for the hearing, or at such other time to which the same may be postponed, upon satisfactory proof, by affidavit or otherwise, of the due publication of the notice, the court must proceed to a hearing, and all persons interested in the estate may appear and contest such petition by filing their objections in writing, and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

Interested parties may contest.

Conveyance, when ordered to be made.

SEC. 239. If, after a full hearing upon the petition and objections, and examination of the facts and circumstances of the claim, the court is satisfied that the petitioner is entitled to a conveyance of the real estate described in the petition, a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner must be made, entered on the minutes of the court, and recorded.

Execution and record of conveyance.

SEC. 240. The executor or administrator must execute the conveyance according to the directions of the decree, a certified copy of which must be recorded with the deed in the office of the recorder of the county where the lands lie, and is *prima facie* evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

Rights of petitioner to enforce contract

SEC. 241. If, upon hearing in the probate court, as hereinbefore provided, the right of the petitioner to have a specific performance of the contract is found to be doubtful, the court must dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months thereafter, proceed in the district court to enforce a specific performance thereof.

Effect of conveyance.

SEC. 242. Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall pass the title to the estate contracted for as

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fully as if the contracting party himself was still living and executed the conveyance.

Effect of recording copy of decree.

SEC. 243. A copy of the decree for a conveyance, made by the probate court and duly certified and recorded in the office of the recorder of the county where the land lies, gives the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Recording decree not to impair power of court to enforce it.

SEC. 244. The recording of any decree, as provided in the preceding section, shall not prevent the court making the decree from enforcing the same by other process.

In case party entitled to conveyance be dead.

SEC. 245. If the person entitled to conveyance dies before the commencement of proceedings therefor under this chapter, or before the completion of the conveyance, any person entitled to succeed his rights in the contract, or the executor or administrator of such decedent, may, for the benefit of the person so entitled, commence such proceedings or prosecute any already commenced, and the conveyance must be so made as to vest the estate in the persons entitled to it, or in the executor or administrator for their benefit.

Decree may direct possession to be surrendered.

SEC. 246. The decree provided for in this chapter may direct the possession of the property therein described to be surrendered to the person entitled thereto, upon his producing the deed and a certified copy of the decree, when, by the terms of the contract, possession is to be surrendered.

CHAPTER X.—OF THE ACCOUNTS RENDERED BY EXECUTORS AND ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

ARTICLE I.—*Liabilities and Compensation of Executors and Administrators.*

Personal liability of executor or administrator.

SEC. 247. No executor or administrator is chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own

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estate, unless the agreement for that purpose, or some memorandum or note therefor, is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

With what executor or administrator chargeable.

SEC. 248. Every executor and administrator is chargeable in his own account with the whole of the estate of the decedent which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

Not to profit or lose by estate.

SEC. 249. He shall not make profit by the increase nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than appraisement, and if any is sold for less than the appraisement he is not responsible for the loss, if the sale has been justly made.

Uncollected debts without fault.

SEC. 250. No executor or administrator is accountable for any debts due to the decedent, if it appears that they remain uncollected without his fault.

Compensation of executor or administrator.

SEC. 251. He shall be allowed all necessary expenses in the care, management, and settlement of the estate, including reasonable fees paid to attorneys for conducting the necessary proceedings or suits in the probate or other courts, and for his services such fees as provided in this chapter; but when the decedent, by his will, makes some other provision for the compensation of his executor, that shall be full compensation for his services, unless, by a written instrument filed in the probate court, he renounces all claim for compensation provided by the will.

Not to purchase claim against estate

SEC. 252. No administrator or executor shall purchase any claim against the estate he represents, and if he pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid.

SEC. 253. When no compensation is provided by the will or the executor renounces all claim thereto, he must

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be allowed commissions upon the amount of the whole estate accounted for by him, as follows: For the first thousand dollars at the rate of seven per cent; for all above that sum at the rate of four per cent; and the same commission must be allowed administrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable for any extraordinary service; the total amount of such allowance must not exceed the amount of commissions allowed by this section, and that public administrators shall receive the same compensation and allowances as are allowed in this title to other administrators.

Commissions allowed.

ARTICLE II. — *Accounting and Settlements by Executors and Administrators.*

SEC. 254. At the third term of the court after his appointment, and thereafter at any time when required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render, for the information of the court, an exhibit, under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

To exhibit receipts, disbursements, and claims allowed.

SEC. 255. If the executor or administrator fails to render an exhibit at the third term of the court, the judge of the probate court must cause a citation to be issued requiring him to appear and render it.

Citation to account at third term.

SEC. 256. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit should be made.

Petition for citation to account.

SEC. 257. If the judge is satisfied, either from the oath of the applicant or from any other testimony offered,

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that the facts alleged are true, and considers the showing of the applicant sufficient, he must direct a citation to be issued to the executor or administrator, requiring him to appear at some day to be named in the citation, which must be during a term of the court, and render an exhibit as prayed for.

Citation to account.

SEC. 258. When an exhibit is rendered by an executor or administrator, any person interested may appear, and, by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of neglect, or has wasted, embezzled, or mismanaged the estate, his letters must be revoked.

Objections to account—who may file.

SEC. 259. If any executor or administrator neglects or refuses to appear and render an exhibit, after having been duly cited, an attachment may be issued against him, and such exhibit enforced, or his letters may be revoked in the discretion of the court.

Attachment for disobeying citation.

SEC. 260. Every executor or administrator must render a full account and a report of his administration at the expiration of one year from the time of his appointment. If he fails to present his account the court or judge must compel the rendering of the account by attachment, and any person interested in the estate may apply for and obtain an attachment; but no attachment must issue unless a citation has been first issued, served, and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account rendered must exhibit not only the debts which have been paid, but also a statement of all debts which have been duly presented and allowed during the period embraced in the account.

When full account to be rendered.

What account to exhibit.

SEC. 261. When the authority of an executor or administrator ceases or is revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Account of executor or administrator after authority ceases.

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When authority of executor or administrator to be revoked.

SEC. 262. If the executor or administrator resides out of the county, or absconds, or conceals himself so that the citation cannot be personally served, and neglects to render an account within thirty days after the time prescribed in this article, or if he neglects to render an account within thirty days after being committed, where the attachment has been executed, his letters must be revoked.

In rendering account to produce and file vouchers.

SEC. 263. In rendering his account the executor or administrator must produce and file vouchers for all charges, debts, claims, and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the decedent, and the disposition thereof. When any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher is lost, or for other good reason cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

Expenditures for items less than twenty dollars.

SEC. 264. On the settlement of his account he may be allowed any item of expenditure, not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own uncontradicted oath, positive to the fact of payment, specifying when, where, and to whom it was made; but such allowance, in the whole, must not exceed five hundred dollars against any one estate.

Day of settlement to be appointed, and notice thereof.

SEC. 265. When any account is rendered for settlement, the court or judge must appoint a day for the settlement thereof. The clerk must thereupon give notice thereof by causing notices to be posted in at least three public places in the county, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account, which must be on some day of a term of the court. The court or probate judge may order such further notice to be given as may be proper.

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SEC. 266. If the account mentioned in the preceding section be for a final settlement, and the estate be ready for distribution, the notice of the settlement must state those facts, and must be served, published, or waived in the same manner as provided in section of this code, relating to sales of property; and on confirmation of the final account, distribution and partition of the estate to all entitled thereto may be immediately had without further notice or proceedings. If, from any cause, the hearing of the account or the partition and distribution be postponed, the order postponing the same to a day certain is notice to all persons interested therein.

Notice for final settlement.

Distribution and partition.

SEC. 267. On the day appointed, or any subsequent day to which the hearing may be postponed by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

Interested party may file exceptions to account.

SEC. 268. All matters, including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs, for cause shown. The hearing and allegations of the respective parties may be postponed from time to time, when necessary, and the court may appoint one or more referees to examine the accounts and make report thereon, subject to confirmation, and may allow a reasonable compensation to the referees, to be paid out of the estate of the decedent.

All matters may be contested by heirs.

Postponement of hearing.

SEC. 269. The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons in any way interested in the estate: saving, however, to all persons laboring under any legal disability their right to move, for cause, to reopen and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution, and in any action brought by any such person the allowance and settlement of the account is *prima facie* evidence of its correctness.

Effect of settlement.

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Notice of settlement.

SEC. 270. The account must not be allowed by the court until it is first proved that notice has been given as required by this chapter, and the decree must show that such proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

Sale of personal, in lieu of real property.

SEC. 271. Whenever it appears to the court, on any hearing of an application for the sale of real property, that it would be for the interest of the estate that personal property of the estate, or some part of such property, should be first sold, the court may decree the sale of such personal property, or any part of it, and the sale thereof shall be conducted in the same manner as if the application had been made for the sale of such personal property in the first instance.

Investment of moneys of estate.

SEC. 272. Pending the settlement of any estate, on the petition of any party interested therein, the probate court may order any moneys in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States or of this territory. Such order can only be made after publication of notice of the petition in some newspaper to be designated by the judge.

ARTICLE III.—*The Payment of Debts of the Estate.*

SEC. 273. The debts of the estate must be paid in the following order:

First. Funeral expenses.

Second. Expenses of last sickness.

Order in which debts to be paid.

Third. The wages of each miner, mechanic, salesman, clerk, servant, or laborer, for services rendered within forty days next preceding the death of the employer, not exceeding one hundred dollars.

Fourth. Debts due the county, territory, or United States.

Fifth. All other demands against the estate, except that where a lien exists by mortgage, pledge, attachment, or judgment, such lien shall have preference to the ex-

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tent of such demand on any specific property to which such lien may attach.

Payment of mortgage.

SEC. 274. The preference given in the preceding section to a mortgage only extends to the proceeds of the property mortgaged. If the proceeds of such property are insufficient to pay the mortgage, the part remaining unsatisfied must be classed with other demands against the estate.

If estate insufficient, claims paid *pro rata*.

SEC. 275. If the estate is insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim; and no creditor of any one class shall receive such payment until all those of the preceding class are fully paid.

Payment of expenses of funeral and last sickness.

SEC. 276. The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses, and the expenses of the last sickness, and the allowance made to the family of the decedent. He may retain in his hands the necessary expenses of administration, but he is not obliged to pay any other debt, or any legacy, until, as prescribed in this article, the payment has been ordered by the court.

Order for payment of debts and discharge of executor or administrator.

SEC. 277. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this chapter, the court must make an order for the payment of the debts, as the circumstances of the estate require. If there are not sufficient funds in the hands of the executor or administrator, the court must specify in the decree the sum to be paid to each creditor. If the whole property of the estate be exhausted by such payment or distribution, such account must be considered as a final account, and the executor or administrator is entitled to his discharge on producing and filing the necessary vouchers and proofs, showing that such payments have been made, and that he has fully complied with the decree of the court.

SEC. 278. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be

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entitled to if the claim were due, established, or absolute, must be paid into the court, and there remain, to be paid over to the party when he becomes entitled thereto; or, if he fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If any creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section are not to be made when the estate is insolvent, unless a *pro rata* distribution is ordered.

As to claims not due or disputed, or contingent claims.

SEC. 279. When a decree is made by the probate court for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on such decree, as upon a judgment in the district court, in favor of each creditor, and the same proceeding may be had under such execution as if it had been issued from the district court. The executor or administrator is liable therefor, on his bond, to each creditor.

When executor or administrator personally liable

SEC. 280. When the accounts of the administrator or executor have been settled and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees, to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to the creditors, as prescribed in section 141, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed. This section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute ten months before such date.

Remedy where claims were not included in order for payment.

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SEC. 281. If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled, as provided in the next chapter; but if there be debts remaining unpaid, or if, for other reasons, the estate be not in a proper condition to be closed, the court must give such extension of time as may be reasonable for a final settlement of the estate.

Payment of legacies.

SEC. 282. At the time designated in the last section, or sooner, if within that time all the property of the estate has been sold, or there are sufficient funds in his hands for the payment of all the debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator must render a final account and pray a settlement of his administration.

When final account to be made.

SEC. 283. If he neglects to render his account, the same proceedings may be had as provided in this chapter in regard to the first account to be rendered by him, and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof, apply to his account presented for final settlement.

Proceedings on neglect to render final account.

CHAPTER XI.

ARTICLE I.—*Partial Distribution Prior to Final Settlement.*

SEC. 284. At any time after the lapse of four months from the issuing of letters testamentary or of administration, any heir, devisee, or legatee, may present his petition to the court for the legacy or share of the estate to which he is entitled, to be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate.

Payment of legacies upon giving bond.

SEC. 285. Notice of the application must be given to the executor or administrator, personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

Notice of application for legacies.

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Who may resist application.

SEC. 286. The executor or administrator, or any person interested in the estate, may appear at the time named and resist the application, or any other heir, devisee, or legatee may make a similar application for himself.

Court to make order in conformity with prayer.

SEC. 287. If, at the hearing, it appears that the estate is but little indebted, and that the share of the party applying may be allowed to him without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring:

First. Each heir, legatee, or devisee obtaining such order, before receiving his share or any portion thereof, to execute and deliver to the executor or administrator a bond in such sum as shall be designated by the probate judge, with sureties to be approved by the judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled.

Legatee to give bond.

Second. The executor or administrator to deliver to the heir, legatee, or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof, designating it. If, in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed.

Whole or part may be ordered paid.

If partition necessary—how made.

The costs of these proceedings to be paid by the applicant, or, if there be more than one, to be apportioned equally amongst them.

Costs.

Petition for order requiring payment of bond.

SEC. 288. When any bond has been executed and delivered under the provisions of the preceding section, and it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, the executor or administrator must petition the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not

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be made. At the hearing, the court, if satisfied of the necessity of such payment, must make an order accordingly, designating the amount and giving a time within which it must be paid. If the money is not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Order for payment of bond.

Suit thereon.

ARTICLE II.—*Distribution on Final Settlement.*

SEC. 289. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, or devisee, the court must proceed to distribute the residue of the estate, if any, in the hands of the executor or administrator, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, and the issue of other children, and any of them, before the close of administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance must, without administration, be distributed to the other heirs at law. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution, and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the court and included in the order or decree; or, the court or judge may order notice of the settlement of such supplementary account, and refer the same as in other cases of the settlement of accounts.

Distribution of estate, how and to whom made.

Expense of closing estate.

SEC. 290. In the order or decree the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, sue for, and recover their respective shares from the executor or administrator, or any person having the same in possession. Such order or decree is conclusive as to the rights of heirs, legatees, or devisees, subject only to be reversed, set aside, or modified on appeal.

What decree to contain.

Effect of decree.

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Distribution when decedent was a non-resident.

SEC. 291. Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this territory, leaving a will which has been duly proved or allowed in the state or territory of his residence, and an authenticated copy thereof has been admitted to probate in this territory, and it is necessary, in order that the estate or any part thereof may be distributed according to the will, that the estate in this territory should be delivered to the executor or administrator in the state or place of his residence, the court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed, in this territory, in relation to all property embraced in such order, which, unless reversed on appeal, binds and concludes all parties in interest. Sales of real estate ordered by virtue of this section must be made in the same manner as other sales of real estate of decedents by order of the probate court.

Discharge of executor or administrator in this territory.

Who may apply for order.

SEC. 292. The order or decree may be made on the petition of the executor or administrator, or of any person interested in the estate. Notice of the application must be given by posting or publication, as the court may direct, and for such time as may be ordered. If partition be applied for, as provided in this chapter, the decree of distribution shall not divest the court of jurisdiction to order partition, unless the estate is finally closed.

Notice of application.

Distribution not to be ordered till all taxes on personal estate are paid.

SEC. 293. Before any decree of distribution of an estate is made, the probate court must be satisfied, by the oath of the executor or administrator or otherwise, that all territorial, county, and municipal taxes legally levied upon the personal property of the estate, have been fully paid.

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ARTICLE III.—*Distribution and Partition.*

SEC. 294. When the estate, real or personal, assigned by the decree of distribution to two or more heirs, devisees, or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate court or judge, who must be duly sworn to the faithful discharge of their duties. A certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, must be issued to them as their warrant, and their oath must be indorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority and is governed by the same rules as if three were appointed.

Estate in common.

Commissioners appointed to make partition.

SEC. 295. Such partition may be ordered and had in the probate court, on the petition of any person interested. But before commissioners are appointed, or partition ordered by the probate court as directed in this chapter, notice thereof must be given to all persons interested, who reside in this territory, or to their guardians, and to the agents, attorneys, or guardians, if any, in this territory, of such as reside out of the territory, either personally or by public notice, as the probate court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given, at any time before the order or decree of distribution, but the commissioners must not be appointed until the order or decree is made distributing the estate.

Petition for partition.

Notice for partition.

SEC. 296. If the real estate is in different counties, the probate court may, if deemed proper, appoint a commissioner for all, or different commissioners for each county. The estate in each county must be divided separately among the heirs, devisees, or legatees, as if there was no other estate to be divided, but the commissioner first appointed must, unless otherwise directed by the probate

Partition when estate in different counties.

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court, make division of such real estate, wherever situated within this territory.

Partition may be made although some of heirs or legatees have parted with their interests.

SEC. 297. Partition or distribution of the real estate may be made as provided in this chapter, although some of the original heirs, legatees, or devisees may have conveyed their shares to other persons, and such shares must be assigned to the person holding the same in the same manner as they otherwise would have been to such heirs, legatees, or devisees.

When shares set out by metes and bounds.

SEC. 298. When both distribution and partition are made, the several shares in the real and personal estate must be set out to each individual in proportion to his right by metes and bounds, or description, so that the same can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

When whole of estate may be assigned to one party.

SEC. 299. When the real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to share therein who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger. The parties accepting the whole must pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or, in case of the minority of such party, then to the satisfaction of his guardian; and the true value of the estate must be ascertained and reported by commissioners appointed to make partition. If the commissioners are of the opinion that the real estate cannot be divided without prejudice or inconvenience to the owners, they must so report to the court, and recommend that the whole be assigned as herein provided, and must find and report the true value of such real estate. On filing the report of the commissioners, and on making or securing the payment as before provided for, the court, if it appears just and proper, must confirm the report, and thereupon the assignment is complete, and the title to the whole of such real estate vests in the person to whom the same is so assigned.

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SEC. 300. When any tract of land or tenement is of greater value than any one's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to any of the parties who will accept it, giving preference as prescribed in the preceding section. The party accepting must pay or secure to the others such sums as the commissioners shall award to make the partition equal, and the commissioners must make their award accordingly; but such partition must not be established by the court until the sums awarded are paid to the parties entitled to the same, or secured to their satisfaction.

Payments to equalize partition.

SEC. 301. When it appears to the court, from the commissioners' report, that it cannot otherwise be fairly divided, and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commissioner appointed for that purpose, and the proceeds distributed. The sale must be conducted, reported, and confirmed, in the same manner and under the same requirements provided in Article IV., Chapter VII., of this title.

When estate may be sold.

Sale — how conducted and proceedings.

SEC. 302. Before any partition is made, or any estate divided, as provided in this chapter, notice must be given to all persons interested in the partition, their guardians, agents, or attorneys, by the commissioners, of the time and place when and where they shall proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

Notice to be given to all parties in interest before partition is made.

SEC. 303. The commissioners must report their proceedings, and the partition agreed upon by them, to the probate court, in writing, and the court may, for sufficient reasons, set aside the report, and commit the same to the same commissioners, or appoint others; and when such report is finally confirmed, a certified copy of the

Reports of commissioners.

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judgment or decree of partition made thereon, attested by the clerk, under the seal of the court, must be recorded in the office of the recorder of the county where the lands lie.

Record of same.

SEC. 304. When the probate court makes a judgment or decree, assigning the residue of any estate to one or more persons entitled to the same, it is not necessary to appoint commissioners to make partition or distribution thereof, unless the parties to whom the assignment is decreed, or some of them, request that such partition be made.

When not necessary to appoint commissioners to make partition.

SEC. 305. All questions as to the advancements made, or alleged to have been made, by the decedent to his heirs, may be heard and determined by the probate court, and must be specified in the decree assigning and distributing the estate; and the final judgment or decree of the probate court, or, in case of appeal, of the supreme court, is binding on all parties interested in the estate.

Of advancements made to heirs.

ARTICLE IV.—*Agents for Absent Interested Parties.—Discharge of Executor or Administrator.*

SEC. 306. When any estate is assigned or distributed by a judgment or decree of the court, as provided in this chapter, to any person residing out of and having no agent in this territory, and it is necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the distribution.

Agent may be appointed to take charge of interest for non-resident.

SEC. 307. The agent must first give a bond to the probate judge, to be approved by him, conditioned that he shall faithfully manage and account for the estate. The court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Agent to give bond.

Compensation of agent.

SEC. 308. When personal property remains in the hands of the agent unclaimed for a year, and it appears

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to the court that it is for the benefit of those interested, it shall be sold under the order of the court, and the proceeds, after deducting the expenses of the sale allowed by the court, must be paid into the territorial treasury. When the payment is made the agent must take from the treasury duplicate receipts, one of which he must file in the office of the territorial auditor, and the other in the probate court.

Unclaimed estate — how disposed of.

SEC. 309. The agent must render to the probate court appointing him, annually, an account showing —

First. The value and character of the property received by him, what portion thereof is still on hand, what sold, and for what.

Second. The income derived therefrom.

Third. The taxes and assessments imposed thereon, for what, and whether paid or unpaid.

Fourth. Expenses incurred in the care, protection, and management thereof, and whether paid or unpaid, when filed.

Account to be rendered by agent.

The probate court may examine witnesses and take proofs in regard to the account, and, if satisfied from such accounts and proofs that it will be for the benefit and advantages of the persons interested therein, the court may, by order, direct a sale to be made of the whole or such parts of the real or personal property as shall appear to be proper, and the purchase money to be deposited in the territorial treasury.

SEC. 310. The agent is liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale as required in the preceding sections, and may be sued thereon by any person interested.

Liability of agent on bond.

SEC. 311. When any person appears and claims the money paid into the treasury, the probate court making the distribution must inquire into such claim, and, being first satisfied of his right thereto, must grant him a certificate to that effect, under its seal; and upon the pre-

Proceeding if claimant of estate appear.

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sentation of the certificate to him, the territorial auditor must draw his warrant on the treasurer for the amount.

Final settlement, decree, and discharge.

SEC. 312. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under the order of the court, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court must make a judgment or decree discharging him from all liability to be incurred thereafter.

Discovery of other property of estate.

SEC. 313. The final settlement of an estate, as in this chapter provided, shall not prevent a subsequent issue of letters testamentary, or of administration, or of administration with the will annexed, if other property of the estate be discovered, or if it become necessary or proper, for any cause, that letters should be again issued.

CHAPTER XII.—OF ORDERS, DECREES, PROCESS, MINUTES, RECORDS, TRIALS, AND APPEALS.

Orders and decrees to be entered—what to contain.

SEC. 314. Orders and decrees made by the probate court, or the judge thereof, need not recite the existence of facts, or the performance of acts upon which the jurisdiction of the court or judge may depend; but it shall only be necessary that they contain the matters ordered or adjudged, except as otherwise provided in this title. All orders and decrees of the court or judge must be entered at length in the minute book of the court, and upon the close of each term the judge must sign the minutes.

Publication—how often made.

SEC. 315. When any publication is ordered, such publication must be made daily or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this title. The court or judge may, however, order a less number of publications during the period prescribed.

SEC. 316. When it is provided in this title that any order or decree of a probate court or judge, or a copy

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thereof, must be recorded in the office of the county recorder, from the time of filing the same for record notice is imparted to all persons of the contents thereof. Record of order or decree imparts notice.

SEC. 317. Citations must be directed to the person to be cited, signed by the clerk, and issued under the seal of the court, and must contain—

First. The title of the proceeding. Citations—requisites of.

Second. A brief statement of the nature of the proceeding.

Third. A direction that the person cited appear at a time and place specified.

SEC. 318. The citation may be issued by the clerk, upon the application of any party, without an order of the judge, except in cases in which such order is by the provisions of this title expressly required. How issued.

SEC. 319. The citation must be served in the manner as a summons in a civil action. How served.

SEC. 320. When personal notice is required and no mode of giving it is prescribed in this title, it must be given by citation. When personal notice given by citation.

SEC. 321. When no other time is specially prescribed in this title, citations must be served at least five days before the return day thereof. Length of time of service of citation before return.

SEC. 322. When a complete description of the real property of an estate sought to be sold has been given and published in a newspaper, as required in the order to show cause why the sale should not be made, such description need not be published in any subsequent notice of sale or notice of a petition for the confirmation thereof; it is sufficient to refer to the description contained in the first notice, as being proved and on file in the court. Sufficiency of description of lands to be sold.

SEC. 323. Except as otherwise provided in this title, the provisions of the Civil Practice Act of this territory are applicable to and constitute the rules of practice in the proceedings mentioned in this title. Rules of practice.

SEC. 324. The provisions of the Civil Practice Act of this territory, relative to new trials and appeals, ex-

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cept in so far as they are inconsistent with the provisions of this title, apply to the proceeding mentioned in this title.

An appeal may be taken to the supreme court from a judgment or order of the probate court—

First. Granting, refusing, or revoking letters testamentary, or of administration, or of guardianship.

Second. Admitting, or refusing to admit, a will to probate.

Third. Against or in favor of the validity of a will, or revoking the probate thereof.

Fourth. Against or in favor of setting apart property or making an allowance for a widow or child.

Cases in which appeals may be taken.

Fifth. Against or in favor of directing the partition, sale, or conveyance of real property.

Sixth. Settling an account of an executor or administrator, or guardian.

Seventh. Refusing, allowing, or directing the distribution or partition of an estate or any part thereof, or the payment of a debt, claim, legacy, or distributive share.

Eighth. Overruling a motion for new trial.

Ninth. Confirming a report of an appraiser setting apart the homestead.

When the order or decree appointing an executor or administrator, or guardian, is reversed, on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such executor or administrator, or guardian, if he have qualified, are as valid as if such order or decree had been affirmed.

Time in which appeal must be taken.

SEC. 325. The appeal must be taken within sixty days after the order, decree, or judgment is entered.

How issues of fact to be tried.

SEC. 326. All issues of fact joined in the probate court must be tried in conformity with the requirements of this title, and in all such proceedings the party affirming is plaintiff, and the one denying or avoiding is defendant. Judgments therein on the issues joined, as well as for costs, may be entered and enforced by execution or otherwise, by the probate court, as in civil actions.

Of the judgment.

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When court to try issues joined.

SEC. 327. If no jury is demanded the court must try the issues joined. If, on written demand, a jury is called by either party, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice to the opposite party, must settle and frame the issues to be tried, and submit the same, together with the evidence of each party, to the jury, on which they must render a verdict. Either may move for a new trial upon the same grounds and errors and in like manner as provided in the Civil Practice Act of this territory for civil actions.

When issues settled and tried by jury.

Motion for new trial.

Appointment of attorney to represent minors, non-residents, &c.

SEC. 328. At or before the hearing of petitions and contests for the probate of wills; for letters testamentary or of administration; for sales of real estate, and confirmations thereof; settlements, partitions, and distributions of estates; setting apart homesteads, and all other proceedings where all the parties interested in the estate are required to be notified thereof, the court may, in its discretion, appoint some competent attorney at law to represent, in all such proceedings, the devisees, legatees, heirs, or creditors of the decedent, who are minors and have no general guardian in the county, or who are non-residents of the territory, and those interested who, though they are neither such minors or non-residents, are unrepresented. The order must specify the names of the parties for whom the attorney is appointed, who is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment. The attorney may receive a fee, to be fixed by the court, for his services, which must be paid out of the funds of the estate as necessary expenses of administration, and, upon distribution, may be charged to the party represented by the attorney. If, for any cause, it become necessary, the probate court may substitute another attorney for the one first appointed, in which case the fee must be proportionately divided. The non-appointment of an attorney will not affect the validity of any of the proceedings.

What order shall specify.

Fee of attorney in such cases.

Substitution of another attorney.

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SEC. 329. When a judgment or decree is made setting apart a homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, a certified copy of the same must be recorded in the office of the recorder of the county in which the property is situated.

Of costs.

SEC. 330. When it is not otherwise prescribed in this title, the probate court, or supreme court, on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. Execution for the costs may issue out of the probate court.

Removal of executor, administrator or guardian for contempt.

Another appointed.

SEC. 331. Whenever an executor, administrator, or guardian is committed for contempt in disobeying any lawful order of the probate court, or the judge thereof, and has remained in custody for thirty days without obeying such order, or purging himself otherwise of the contempt, the probate court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint some other person entitled thereto, executor, administrator, or guardian, in his stead.

When personal service on guardian sufficient.

SEC. 332. Whenever an infant, insane, or incompetent person has a guardian of his estate residing in this territory, personal service upon the guardian of any process, notice, or order of the probate court, concerning the estate of a deceased person, in which the ward is interested, is equivalent to service upon the ward; and it is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward, and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

CHAPTER XIII.—OF PUBLIC ADMINISTRATORS.

What estates to be administered by public administrator.

SEC. 333. Every public administrator, duly appointed, commissioned, and qualified, must take charge of the estates of persons dying within his county, as follows:

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First. Of the estates of decedents for which no administrators are appointed, and which, in consequence thereof, are being wasted, uncared for, or lost.

Second. Of the estate of decedents who leave no known heirs, or are strangers.

Third. Of estates ordered into his hands by the probate court.

Fourth. Of estates upon which letters of administration have been issued to him by the probate court.

Letters to public administrator.

SEC. 334. Whenever a public administrator takes charge of an estate, which he is entitled to administer, without letters of administration being issued, or under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in a like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of the administrator's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court.

Bond and oath.

Duty of person in whose house one dies without known heir.

SEC. 335. Whenever a stranger, or person without known heirs, dies intestate in the house or premises of another, the possessor of the premises or any one knowing the facts, must give immediate notice thereof to the public administrator of the county; and, in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the administrator or any party interested.

Public administrator to return inventory.

SEC. 336. The public administrator must make and return a perfect inventory of all estates taken into his possession, administer and account for the same according to the provisions of this title, subject to the control and direction of the probate court.

Duty of public administrator when another appointed administrator.

SEC. 337. If, at any time, letters testamentary or of administration are regularly granted to any other person on an estate of which the public administrator has charge, he must, under the order of the probate court, account for, pay, and deliver to the executor or administrator thus appointed, all the money, property, papers,

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and estate of every kind, in his possession or under his control.

Duty of civil officers relative to estate.

SEC. 338. All civil officers must inform the public administrator of all property known to them, belonging to a decedent, which is liable to loss, injury, or waste, and which by reason thereof ought to be in the possession of the public administrator.

Suits by public administrator.

SEC. 339. The public administrator must institute all suits and prosecutions necessary to recover the property, debts, papers, or other estate of the decedent.

Proceeding against party charged with concealing or embezzling estate.

SEC. 340. When the public administrator complains to the probate judge, on oath, that any person has concealed, embezzled, or disposed of, or has in his possession any money, goods, property, or effects, to the possession of which such administrator is entitled in his official capacity, the judge may cite such person to appear before the probate court, and examine him on oath touching the matter of such complaint.

Examination and punishment of party charged under preceding section.

SEC. 341. All such interrogations and answers must be reduced to writing and signed by the party examined, and filed in the probate court. If the person so cited refuses to appear and submit to such an examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may convict him to the county jail, there to remain in close custody until he submits to the order of the court.

Public administrator to account.

SEC. 342. The probate court may at any time order the public administrator to account for and deliver all the money and property of an estate in his hands to the heirs, or to the executors or administrators regularly appointed.

When to make return of condition of estate.

SEC. 343. The public administrator must, once in every six months, make to the probate judge, under oath, a return of all estates of decedents which have come into his hands, the value of the same, the money which has come into his hands from such estate, and what he has done with it, and the amount of his fees and expenses incurred, and the balance, if any, remaining in his hands,

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publish the same six times in some newspaper in the county, or, if there is none, then post the same, legibly written or printed, in the office of the county clerk of the county.

SEC. 344. It is the duty of every public administrator, as soon as he shall receive the same, to deposit with the county treasurer of the county in which the probate proceedings are pending, all moneys of the estate not required for the current expenses of the administration; and such moneys may be drawn upon the order of the executor or administrator, countersigned by the probate judge, when required for the purposes of administration. It shall be the duty of the county treasurer to receive and safely keep all such moneys and pay them out upon the order of the executor or administrator, when countersigned by the probate judge, and not otherwise, and to keep an account with each estate of all moneys received and paid to him; and the county treasurer shall be allowed one per cent upon all moneys received and kept by him, and no greater fees for any services herein provided. The money thus deposited may, upon order of the probate court, be invested, pending the proceedings, in securities of the United States, or of this territory, when such investment is deemed by the court to be for the best interests of the estate. After a final settlement of the affairs of any estate, if there be no heirs or other claimants thereof, the county treasurer shall pay into the territorial treasury all moneys and effects in his hands belonging to the estate, upon order of the probate court, and if any such moneys and effects escheat to the territory, they must be disposed of as other escheated estates.

Disposition of moneys received by public administrator.

SEC. 345. The public administrator must not be interested in expenditures of any kind made on account of any estate he administers; nor must he be associated, in business or otherwise, with any one who is so interested, and he must so attach to his report and publication, made in accordance with the preceding section, his affidavit to that effect.

Must not be interested in payments upon or on account of estate.

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When to settle with county clerk and treasurer.

SEC. 346. Public administrators are required to account, under oath, and to settle and adjust their accounts, relating to the care and disbursement of money or property belonging to estates in their hands, with the county clerks of their respective counties, on the first Monday in each month; and they must pay to the territorial treasurer any money remaining in their hands, of an estate unclaimed, as provided in sections 300 to 303, both inclusive.

Proceedings against public administrator after final settlement.

SEC. 347. When it appears from the returns made in pursuance of the foregoing sections, that any money remains in the hands of the public administrator (after final settlement of the estate), unclaimed, which should be paid over to the territorial treasurer, the probate judge must order the same to be paid over to the territorial treasurer, and, on failure of the public administrator to comply with the order within ten days after the same is made, the district attorney for the county must immediately institute the requisite legal proceedings against the public administrator, for a judgment against him and the sureties on his official bond, in the amount of money so withheld, and costs.

Payment of fees of officers.

SEC. 348. The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets thereof so soon as the same come into his hands.

Public administrator may administer oaths.

SEC. 349. Public administrators may administer oaths in regard to all matters touching the discharge of their duties or the administration of estates in their hands.

Preceding chapters applicable to public administrator.

SEC. 350. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties, or for the administration of an estate in his hands, the provisions of the preceding chapters of this title must govern.

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CHAPTER XIV.

ARTICLE I.—*Guardians of Minors.*

SEC. 351. The probate judge of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either, or both of them, of minors who have no guardian legally appointed by will, or deed, and who are inhabitants or residents of the county, or who reside without the territory and have estate within the county. Such appointment may be made on the petition of a relative or other person in behalf of such minor. Before making such appointment the judge must cause such notice as he deems reasonable to be given to the relatives of the minor residing in the county, and to any person having care of such minor.

Appointment of guardian for minor by probate judge

SEC. 352. If the minor is under the age of fourteen years the probate judge may nominate and appoint his guardian. If he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the judge, must be appointed accordingly.

When minor may name guardian.

SEC. 353. If the guardian nominated by the minor is not approved by the judge, or, if the minor resides out of the territory, or if after being duly cited by the judge, he neglects for ten days to nominate a suitable person, the judge may nominate and appoint the guardian, in the same manner as if the minor were under the age of fourteen years.

When judge may appoint guardian for minor over fourteen.

SEC. 354. When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may appoint his own guardian, subject to the approval of the probate judge.

Selection of guardian by minor arriving at fourteen years of age.

SEC. 355. The father of the minor, if living, and, in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, must be entitled to the guardianship of the minor.

Father or mother entitled to guardianship.

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Guardian to have custody of minor.

SEC. 356. If the minor has no father or mother living, competent to have the custody and care of his education, the guardian appointed shall have the custody and tuition of his ward.

Powers of guardian.

SEC. 357. Every guardian appointed shall have the custody and tuition of the minor, and the care and management of his estate, until such minor arrives at the age of majority or marries, or until the guardian is legally discharged.

Bond of guardian.

SEC. 358. Before the order appointing any person guardian under this chapter takes effect, and before letters issue, the judge must require of such person a bond to the minor, with sufficient sureties, to be approved by the judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law; and the following conditions shall form a part of such bond without being expressed therein:

First. To make an inventory of all the estate, real and personal, of his ward, that comes to his possession or knowledge, and to return the same within such time as the judge may order.

Conditions of bonds.

Second. To dispose of and manage the estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward.

Third. To render an account, on oath, of the property, estate, and moneys of the ward in his hands, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the court directs, and at the expiration of his trust to settle his accounts with the probate judge, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person or persons who are lawfully entitled thereto.

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Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form the letters of guardianship must be substantially the same as letters of administration, and the oath of the guardian must be endorsed thereon, that he will perform the duties of his office as such guardian according to law.

SEC. 359. When any person is appointed guardian of a minor, the probate judge may, with the consent of such person, insert in the order of appointment conditions otherwise obligatory, providing for the care, treatment, education, and welfare of the minor, and to perform such conditions is a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible.

Probate judge may insert conditions in order of appointment.

SEC. 360. All letters of guardianship issued, and all guardians' bonds executed, under the provisions of this chapter, with the affidavits and certificates thereon, must be recorded by the clerk of the probate court having jurisdiction of the persons and estates of the wards.

Letters and bond to be recorded.

SEC. 361. If any minor, having a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the probate court, and the charges therefor may be allowed accordingly, in the settlement of the accounts of his guardian.

Maintenance of minor.

SEC. 362. Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties, with regard to the person and estate of his ward, as guardians appointed by the probate court, except so far as their powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed.

Testamentary guardian—powers and duties of.

SEC. 363. Nothing contained in this chapter affects

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Guardian *ad litem.*

or impairs the power of any court to appoint a guardian to defend the interest of any minor interested in any suit or matter pending therein.

ARTICLE II.—*Guardians of Insane and Incompetent Persons.*

Appointment of guardian for person of unsound mind.

SEC. 364. When it is represented to the probate judge, upon verified petition of any relative or friend, that any person is insane, or, from any cause, mentally incompetent to manage his property, the judge must cause a notice to be given to the supposed incompetent person of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced before him on the hearing.

Appointment after hearing petition.

SEC. 365. If, after a full hearing and examination upon such petition, it appears to the probate judge that the person in question is incapable of taking care of himself and managing his property, he must appoint a guardian of his person and estate, with the powers and duties in this chapter specified.

Powers and duties of such guardian.

SEC. 366. Every guardian appointed as provided in the preceding section has the care and custody of the person of his ward, and the management of all his estate, until such guardian is legally discharged, and he must give bond to such ward in like manner and with like conditions as before described with respect to the guardian of a minor.

Any person who has been declared insane, or the guardian or any relative of such person within the third degree, or any friend, may apply, by petition to the probate judge of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane. Upon receiving the petition the judge must appoint a day for the hearing, and, if the petitioner request it, shall order an investigation before a jury, which shall be summoned

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and impanelled in the same manner as juries are summoned and impanelled in other cases in the probate court. The judge shall cause notice of the trial to be given to the guardian of the petitioner, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county. On the trial the guardian or relative of the petitioner, and, in the discretion of the judge, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify as in other cases, and may be called and examined by the judge of his own motion. If it be found that the petitioner be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person be not a minor, shall cease.

Petition to have guardian discharged on ground of restoration to reason of ward.

ARTICLE III.— *Powers and Duties of Guardians.*

SEC. 367. Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, must pay all just debts due from the ward out of his personal estate and the income of his real estate, if sufficient; if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided in this title for the sale of real estate of decedents.

Guardian to pay debts of ward and of estate.

SEC. 368. Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the probate judge, compound for the same, and give discharges to the debtors on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend.

To settle all accounts and collect debts due ward.

SEC. 369. Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for

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the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate upon obtaining an order of the court therefor, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

Duty to manage estate, maintain ward, and may sell real estate.

SEC. 370. When a guardian has advanced for the necessary maintenance, support, or education of his ward, an amount not disproportionate to the value of his estate, or his condition of life, and the same is made to appear to the satisfaction of the court, by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlements. Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support, or education for his ward, the court may order him to do so, and enforce such order by proper process. Whenever any third person, at his request, supplies a ward with such suitable and necessary maintenance, support, or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate, and enforce such payment by due process.

Education and support of ward.

When guardian may assent to partition of real estate of ward.

SEC. 371. The guardian may join in and assent to a partition of the real estate of the ward whenever such assent may be given by any person.

Inventory and appraisement of ward's estate.

SEC. 372. Every guardian must return to the probate court an inventory of the estate of his ward within three months after his appointment, and annually thereafter. When the value of the estate exceeds the sum of twenty thousand dollars, semi-annual returns must be made to the probate court. The probate court may, upon application made for that purpose by any person, compel the guardian to render an account to the probate court, of the estate of his ward. The inventories and accounts so to be returned or rendered must be sworn to by the

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guardian. All the estate of the ward, described in the first inventory must be appraised by appraisers appointed, sworn, and acting in the manner provided for regulating the settlement of the estate of decedents; such inventory, with the appraisement of the property therein described, must be recorded by the clerk of the probate court in a proper book kept in his office for that purpose. Whenever any property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to or acquired by any ward for his benefit, the like proceedings must be had for the return and appraisement thereof that are herein provided in relation to the first inventory and return.

In case other property acquired or discovered.

SEC. 373. The guardian must, upon the expiration of a year from the time of appointment, and as often thereafter as he may be required, present his account to the probate court for settlement and allowance.

Settlement of guardian.

SEC. 374. When an account is rendered by two or more joint guardians, the probate judge may, in his discretion, allow the sum upon the oath of any of them.

Allowance of account of joint guardians.

SEC. 375. Every guardian must be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable.

Expenses and compensation of guardian.

ARTICLE IV.—*The Sale of Property and Disposition of the Proceeds.*

SEC. 376. When the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward, when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor.

When guardian may sell estate of ward

SEC. 377. When it appears to the satisfaction of the court, upon the petition of the guardian, that for the benefit of his ward his real estate, or some part thereof, should be sold, and the proceeds thereof put out at

Order of court for sale obtained.

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interest, or invested in some productive stock, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an order therefor.

SEC. 378. If the estate is sold for the purposes mentioned in this article, the guardian must apply the proceeds of the sale to such purposes as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward, when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Application of proceeds of sales.

SEC. 379. If the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

Investment of proceeds of sales.

SEC. 380. To obtain an order for such sale the guardian must present to the probate court of the county in which he was appointed guardian a verified petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale.

Petition for order of sale.

SEC. 381. If it appear to the court or judge, from the petition, that it is necessary or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the court or judge must thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before the court at a time and place therein specified, not less than four, nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appear that it is necessary, or would be beneficial to the ward, to sell the per-

Order to show cause why estate should not be sold.

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sonal estate or some part of it, the court must order the sale to be made.

SEC. 382. A copy of the order must be personally served on the next of kin of the ward, and all persons interested in the estate, at least fourteen days before the hearing of the petition, or must be published at least three successive weeks in a newspaper published in the county, or if there be none printed in the county, then in such newspaper as may be specified by the court or judge in the order. If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served or published.

Service of order.

SEC. 383. The probate court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear and examine the proof and allegations of the petitioner and of the next of kin, and of all other persons interested in the estate who oppose the application.

Hearing of application.

SEC. 384. On the hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the probate court or judge, in the same manner and with like effect as in other cases provided for in this title.

Examination of witnesses on hearing.

SEC. 385. If any person appears and objects to the granting of any order prayed for under the provisions of this article, and it appears to the court that either the petition or the objection thereto is sustained, the court may, in granting or refusing the order, award costs to the party prevailing, and enforce the payment thereof.

Costs — how awarded.

SEC. 386. If, after a full examination, it appears necessary, or for the benefit of the ward, that his real estate, or some part thereof, should be sold, the court may grant an order therefor, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition,

What order shall specify.

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order such sale to be made either at public or private sale.

SEC. 387. Every guardian, authorized to sell real estate, must, before the sale, give bond to the probate judge, with sufficient surety, to be approved by him, with conditions to sell the same in the manner, and to account for the proceeds of the sale, as provided for in this chapter and Chapter VII. of this title.

Guardian to give bond before sale.

SEC. 388. All the proceedings under the petitions of guardians for sales of property of their wards, giving notice, and the hearing of such petitions, granting or refusing the order of sale, directing the sale to be made at public or private sale, re-selling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders, rejecting or confirming sales, and reports of sales, ordering and making conveyances of property sold, accounting and the settlements of accounts, must be had and made as required by the provisions of this title concerning estates of decedents, unless otherwise specially provided in this chapter.

Provisions of this title to govern.

SEC. 389. No order of sale granted in pursuance of this article continues in force more than one year after granting the same without a sale being had.

Limitation of order of sale.

SEC. 390. All sales of real estate of wards must be for cash, or for part cash and part deferred payments not to exceed three years, bearing date from date of sale, as in the discretion of the probate judge is most beneficial to the ward. Guardians making sales must demand and receive from the purchasers bond and mortgage on the real estate sold, with such additional security as the judge deems necessary, and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

Terms of sale.

Security on deferred payments.

SEC. 391. The probate court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the probate judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any

Court may order moneys in hands of ward to be invested.

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other of his ward's money in his hands, in real estate or in any other manner most to the interest of all concerned therein; and the probate court may make such other orders, and give such directions as are needful for the management, investment, and disposition of the estate and effects as circumstances require.

ARTICLE V.—*Non-Resident Guardians and Wards.*

SEC. 392. When a person liable to be put under guardianship, according to the provisions of this chapter, resides without this territory and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the probate judge of any county in which there is any estate of such absent person, for the appointment of a guardian; and if after notice given to all interested, in such manner as the judge orders, and a full hearing and examination, it appears proper, a guardian for such absent person may be appointed.

Appointment of guardian for non-resident.

SEC. 393. Every guardian appointed under the preceding section has the same powers and performs the same duties with respect to the estate of the ward found within this territory, and with respect to the person of the ward, if he shall have come to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

Powers and duties of guardian under preceding section.

SEC. 394. Every guardian must give bond to the ward in the manner and with the like conditions as hereinbefore provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, must be confined to such estate and effects as come to his hands in this territory.

Bond of such guardian.

SEC. 395. The guardianship which is first lawfully granted of any person residing out of this territory, extends to all the estate of the ward within the same, and excludes the jurisdiction of the probate court of every other county.

Extent of guardianship under this title.

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Removal of property of non-resident ward.

SEC. 396. When the guardian and ward are both non-residents, and the ward is entitled to property in this territory which may be removed to another state or territory or foreign country, without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the state or territory or foreign country of the residence of the ward, upon the application of the guardian to the probate judge of the county in which the estate of the ward, or the principal part thereof, is situated.

Application for such removal.

SEC. 397. The application must be made upon ten days notice to the resident executor, administrator, or guardian, if there be such, and, upon such application, the non-resident guardian must produce and file a certificate, under the hand of the clerk, and seal of the court from which his appointment was derived, showing:

First. A transcript of the record of his appointment.

Second. That he has entered upon the discharge of his duties.

Third. That he is entitled, by the laws of the state or territory of his appointment, to the possession of the estate of his ward; or, must produce and file a certificate, under the hand and seal of the clerk of the court having jurisdiction in the country of his residence of the estates of persons under guardianship, or of the highest court of such country, that, by the laws of such country, the applicant is entitled to the custody of the estate of his ward without the appointment of any court.

Order granting leave to move.

Upon such application, unless good cause to the contrary is shown, the probate judge must make an order granting to such guardian leave to take and remove the property of his ward to the state or place of his residence,

Authority given on such order for removal.

which is authority to him to sue for and receive the same in his own name, for the use and benefit of his ward.

Discharge of person in possession.

SEC. 398. Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is

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made, on filing with the probate court the receipt therefor, of the guardian of such absent ward.

ARTICLE VI. — *General and Miscellaneous Provisions.*

SEC. 399. Upon complaint made to him by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects, or an instrument in writing belonging to the ward, or to his estate, the probate judge may cite such suspected person to appear before him and may examine and proceed with him on such charge in the manner provided in this title with respect to persons suspected of, and charged with, concealing or embezzling the effects of decedent.

Examination of persons suspected of defrauding wards.

SEC. 400. When a guardian, appointed either by the testator or the probate judge, becomes insane or otherwise incapable of discharging his trust, or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the probate court may, upon such notice to the guardian as the court may require, remove him, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign, when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided, the probate court, or the judge thereof, may appoint another in the place of the guardian who has resigned or has been removed.

Of removal and resignation of guardians.

SEC. 401. The marriage of a minor ward terminates the guardianship, and the guardian of an insane or other person may be discharged by the probate judge when it appears to him, on the application of the ward or otherwise, that the guardianship is no longer necessary.

Guardianship — how terminated.

SEC. 402. The probate judge may require a new bond to be given by a guardian whenever he deems it necessary, and may discharge the existing sureties from

New bond — when required.

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further liability, after due notice given as he may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

Guardian's bond to be filed.

Action on.

SEC. 403. Every bond given by a guardian must be filed and preserved in the office of the clerk of the probate court of the county, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward, or of any person interested in the estate.

Limitation of action on guardian's bond.

SEC. 404. No action can be maintained against the sureties on any bond given by a guardian unless it be commenced within three years from the discharge or removal of the guardian; but if at the time of the discharge or removal of the guardian the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within three years after such disability is removed.

Limitation for recovery of property sold by guardian.

SEC. 405. No action for the recovery of any estate, sold by a guardian, can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three years next after the removal thereof.

Court may appoint more than one guardian.

SEC. 406. The court, in its discretion, whenever necessary, may appoint more than one guardian of any person subject to guardianship, who must give bond and be governed and liable in all respects as a sole guardian.

Powers of court at chambers.

SEC. 407. The power conferred upon the probate judge in relation to guardians and wards may be exercised by him at chambers, or as the act of the probate court, when holding such court; and any order appointing a guardian must be entered as, and become, a decree of the court. The provisions of this title relative to the estates of decedents, so far as they relate to the practice in the probate or district courts, applies to proceedings under this chapter.

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SEC. 408. The provisions of the Civil Practice Act relating to the justification of sureties, are hereby declared to apply to guardians appointed by the court, and to the bonds taken or to be taken from such guardians, and to the sureties on such bonds.

Application of Civil Practice Act to guardians.

CHAPTER XV.—GUARDIAN AND WARD.

SEC. 409. A guardian is a person appointed to take care of the person or property of another.

"Guardian" defined.

SEC. 410. The person over whom or over whose property a guardian is appointed is called his ward.

"Ward" defined.

SEC. 411. Guardians are either general or special.

SEC. 412. A general guardian is the guardian of the person or of all the property of the ward within this territory, or both.

SEC. 413. Every other is a special guardian.

SEC. 414. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing.

When guardian may be appointed by will or by deed.

First. If the child be legitimate, by the father, with the written consent of the mother, or by either parent, if the other be dead or incapable of consent.

Second. If the child be illegitimate, by the mother.

SEC. 415. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

No person to have power as guardian of property except by appointment.

SEC. 416. A guardian of the person or property, or both, of a person residing in this territory, who is a minor, or of unsound mind, may be appointed in all cases other than those named in section 241, by the probate court, as provided in the Code of Civil Procedure.

Appointment of guardian as provided in Code of Civil Procedure.

SEC. 417. A guardian of the property within this territory of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the probate court.

Guardian for non-resident having property in this territory.

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Jurisdiction of court making appointment.

SEC. 418. In all cases the court first making the appointment of a guardian has the exclusive jurisdiction to control him.

SEC. 419. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

First. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and, if the child be of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question.

Considerations to govern in appointing guardian.

Second. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but, other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

Third. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

1. To a parent.

2. To one who was indicated by the wishes of a deceased parent.

3. To one who already stands in the position of a trustee of a fund to be applied to the child's support.

4. To a relative.

Guardian to have power over person and property.

SEC. 420. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

Duties and powers of guardian.

SEC. 421. A guardian of the person is charged with the custody of the ward, and must look to his support, health, and education. He may fix the residence of the ward at any place in this territory, but not elsewhere, without permission of the court.

Duty of guardian as to property of ward.

SEC. 422. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the probate court, but must, so far as it is in his power,

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maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward at the close of his guardianship, in as good condition as he received it.

Relation of guardian and ward.

SEC. 423. The relation of guardian and ward is confidential, and is subject to trusts at common law.

Court may control guardian.

SEC. 424. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

Power of surviving guardian.

SEC. 425. On the death of one of two or more joint guardians, the power continues to the survivor, until a further appointment is made by the court.

SEC. 426. A guardian may be removed by the probate court for any of the following causes:

First. For abuse of his trust.

Second. For continued failure to perform its duties.

Third. For incapacity to perform its duties.

Fourth. For gross immorality.

Causes for which a guardian may be removed.

Fifth. For having an interest adverse to the faithful performance of his duties.

Sixth. For removal from the territory.

Seventh. In the case of a guardian of the property, for insolvency; or,

Eighth. When it is no longer proper that the ward should be under guardianship.

SEC. 427. The power of a guardian appointed by a parent is superseded:

When power of guardian appointed by a parent is suspended.

First. By his removal, as provided by the preceding section;

Second. By a solemnized marriage of the ward; or,

Third. By the ward's attaining majority.

SEC. 428. The power of a guardian appointed by a court is suspended only:

When power of guardian appointed by a court is suspended.

First. By order of the court; or,

Second. If the appointment was made solely because of the ward's minority, by his attaining majority; or,

Third. The guardianship over the ward, by the marriage of the ward.

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When ward may settle with and release guardian.

SEC. 429. After a ward has come to his majority he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

When guardian entitled to release.

SEC. 430. A guardian appointed by the court is not entitled to his discharge until one year after the ward's majority.

Ward of unsound mind may be placed in asylum.

SEC. 431. Any ward of unsound mind may be placed in an asylum for such person, upon the order of the probate judge of the county in which he resides, as follows:

Proceeding in such case.

First. The judge must be satisfied by the oath of two reputable physicians that such person is of unsound mind and unfit to be at large.

Second. Before granting the order the judge must examine the person himself; or, if that is impracticable, cause him to be examined by an impartial person.

Jury may be demanded on the investigation.

Third. After the order is granted, the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, may demand an investigation before a jury, which must be conducted in all respects as under an inquisition of lunacy.

How infant shall appear.

When an infant is a party he must appear either by his general guardian, if he have one, or by a guardian appointed by the justice, as follows:

First. If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, upon the applicatien of a relative or friend.

Second. If the infant be defendant, the guardian must be appointed at the time the summons is returned, or before the answer. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age; otherwise the justice must make the appointment.

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CHAPTER XVI.—EXECUTION AND REVOCATION OF WILLS.

SEC. 432. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is subject to succession, as provided for by Chapter XIX. of this Act, as the estate of an intestate, being chargeable in both cases with the payment of all the decedent's debts, as provided in this act.

Who may make will and what may be devised.

SEC. 433. A person having an insane delusion is incompetent to make a will.

Who incapable of making will.

SEC. 434. A will or part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

Will denied probate.

When revocation declared void.

SEC. 435. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

What married woman may devise.

Will of—how proved.

SEC. 436. Every estate and interest in real or personal property to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will except as otherwise provided in sections —.

What may be disposed of by will (?)

SEC. 437. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes, cannot take under a will, unless expressly authorized by statute.

Who may take by will.

SEC. 438. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will and a nuncupative will, must be executed and attested, as follows:

First. It must be subscribed at the end thereof, by the testator himself, or some person in his presence, and, by his direction, must subscribe his name thereto;

Making and attestation of wills.

Second. The subscribtion must be made in the presence of each of the attesting witnesses, or be acknowl-

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edged by the testator to them, to have been made by him or by his authority;

Third. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

Fourth. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request and in his presence.

Olographic wills.

SEC. 439. An olographic will is one that is entirely written, dated and signed by the hand of the testator himself; it is subject to no other form, and may be made in or out of this territory, and need not be witnessed.

Subscribing witness to will.

SEC. 440. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

Conjoint or mutual will.

SEC. 441. A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will.

If witness to will competent, subsequent incompetency not to prevent probate.

SEC. 442. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily provided.

Conditional will.

SEC. 443. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the conditions.

When devise to subscribing witness void.

SEC. 444. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same, but a mere charge on the estate of a testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

SEC. 445. If a witness, to whom any beneficial devise, legacy, or gift, void by the preceding section, is

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made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

When share of estate saved to subscribing witness.

SEC. 446. A will of real or personal property, or both, or a revocation thereof, made out of this territory by a person not having his domicile in this territory, is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this territory, and according to the provisions of this chapter.

Will or revocation of same as valid when made out of territory as within.

SEC. 447. Whenever a will or a revocation thereof is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated, as to the validity of its execution, by the law of such place, notwithstanding the testator subsequently changed his domicile to a place by the law of which such will would be void.

Validity of will or revocation governed by law of place where executed.

SEC. 448. The execution of a codicil referring to a previous will, has the effect to republish the will, as modified by the codicil.

Codicil — effect of.

SEC. 449. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

Nuncupative will need not be formally attested.

SEC. 450. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

Nuncupative will — requisites of.

First. The estate bequeathed must not exceed in value the sum of one thousand dollars.

Second. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time, to bear witness that such was his will, or to that effect.

Third. The decedent must, at the time, have been in

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actual military service in the field, or doing duty on ship board at sea, and, in either case, in actual contemplation, fear, or peril of death; or, the decedent must have been at the time in expectation of immediate death from an injury received the same day.

Time within which nuncupative will can be received.

SEC. 451. No proof must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words or the substance thereof were reduced to writing within thirty days after they were spoken.

Probate of nuncupative will.

SEC. 452. No probate of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words or the substance thereof be first committed to writing and process issued to call in the widow or other persons interested, to contest the probate of such will, if they think proper.

Revocation or alteration of written will.

SEC. 453. Except in cases in this chapter mentioned, no written will nor any part thereof, can be revoked or altered otherwise than:

First. By a written will or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

Second. By being burnt, torn, cancelled, obliterated, or destroyed with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence, and by his direction.

Proof of cancellation or destruction of will by person other than testator.

SEC. 454. When a will is cancelled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction, must be proved by two witnesses.

Revocation of will made in duplicate.

SEC. 455. The revocation of a will executed in duplicate, may be made by revoking one of the duplicates.

SEC. 456. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation or provision wholly inconsistent with the terms of the former will; but in other cases the prior will re-

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mains effectual so far as consistent with the provisions of the subsequent will.

Revocation of prior will by a subsequent.

SEC. 457. If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or, unless, after such destruction, cancellation, or revocation, the first will is duly re-published.

When destruction or cancellation of a second will revives first one.

SEC. 458. If, after having made a will, the testator marries and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provisions have been made for such issue by some settlement, or, unless such issue is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Effect of marriage and child born to testator after will made.

SEC. 459. If, after making a will, the testator marries and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or, unless she is provided in the will, or in such way mentioned therein, as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

Effect when testator marries after making will and wife survives him.

SEC. 460. A will executed by an unmarried woman is revoked by her subsequent marriage, and is not revived by the death of her husband.

Will of unmarried woman revoked by marriage.

SEC. 461. An agreement made by a testator for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal, but the property passes by the will, subject to the same remedies on the testator's agreement for a specific performance, or otherwise, against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

Agreement to sell or transfer property does not revoke will disposing of same.

SEC. 462. A charge of incumbrance upon any estate

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for the purpose of securing payment of money, or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or incumbrance.

Incumbrance made upon property not to revoke will disposing of same.

SEC. 463. A conveyance, settlement, or other act of a testator by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

Will not revoked by subsequent conveyance if interest of testator not wholly divested.

SEC. 464. If the instrument by which an alteration is made of the testator's interest in a thing previously disposed of by his will, expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

When instrument subsequently made operates as a revocation of will.

SEC. 465. The revocation of a will revokes all its codicils.

SEC. 466. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for, nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

Share of child born after making will.

SEC. 467. When a testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

Share of child omitted in will.

SEC. 468. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child or to the issue of a child omitted in the will,

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as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will would thereby be defeated; in such case such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

Share of estate assigned to child omitted from will or born after making.

SEC. 469. If such children or their descendants so unprovided for had an equal proportion of the testator's estate bestowed on them in the testator's lifetime by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

Of advancement made to child.

SEC. 470. When any estate is devised to any child or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

When lineal descendants take estate given devisee.

SEC. 471. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

Estate in lands devised in will.

SEC. 472. Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby, and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

What title or interest in lands acquired after making will passes by will.

SEC. 473. No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent so-

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ciety or corporation, or to any person or persons in trust for charitable uses, except the same be done by will, duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death, such devise or legacy, and each of them, shall be valid: *Provided*, That no such devises or bequests shall collectively exceed one-third of the estate of the testator, leaving legal heirs, and in such case a *pro rata* deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law.

Validity of devise to corporation or charitable society.

CHAPTER XVII.—Interpretation of Wills and Effect of Various Provisions.

Construction of will.

SEC. 474. A will is to be construed according to the intention of the testator. When his intention cannot have effect to its full extent, it must have effect as far as possible.

In case of uncertainty of will, how intention of testator to be ascertained.

SEC. 475. In case of uncertainty arising upon the face of a will as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

Rules for interpretation of will.

SEC. 476. In interpreting a will, subject to the law of this territory, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

If several testamentary instruments, same construed together.

SEC. 477. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

Construed as a whole.

SEC. 478. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable the latter must prevail.

Conflicting clauses.

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SEC. 479. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distict, or by inference or argument from other parts of the will, or by an inaccurate recital of, or reference to, its contents in another part of the will.

Distinct devise not affected by other parts of will.

SEC. 480. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

Explanation of ambiguous meaning.

SEC. 481. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

Words of will — how taken.

SEC. 482. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

Interpretation of words.

SEC. 483. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

Rule if more than one mode of interpretation.

SEC. 484. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

Technical words — how taken.

SEC. 485. Technical words are not necessary to give effect to any species of disposition by a will.

Technical words not necessary.

SEC. 486. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

Interest passes by devise of real property.

SEC. 487. Real or personal property embraced in a power to devise, passes by a will purporting to devise all the real or personal property of the testator.

When real and personal property passes by will.

SEC. 488. A devise or bequest of all the testator's real or personal property, in express terms or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

When devise or bequest passes all property of testator.

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When devise of residue passes all real property of testator.

SEC. 489. A devise of residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

When devise of residue passes all personal property of testator.

SEC. 490. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

What is vested by words of donation and not of limitation.

SEC. 491. A testamentary disposition to "heirs," relatives, nearest relations, "representatives," legal representatives, or personal representatives, or family, issue, descendants, nearest or next of kin, of any person without other words of qualification, and when the terms are used as words of donation and not of limitation, vests the property in those who would be entitled to succeed to the property of such persons according to the provisions of the title on successions in this code.

When terms in last section are used as words of donation and not of limitation.

SEC. 492. The terms mentioned in the last section are used as words of donation and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

Meaning of words in will referring to death or survivorship.

SEC. 493. Words in a will referring to death or survivorship simply relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

Words descriptive of class.

SEC. 494. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period it includes also all persons coming within the description before the time to which possession is postponed.

When real estate mentioned in will to be deemed personal property.

SEC. 495. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

SEC. 496. A child conceived before but not born

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until after a testator's death or any other period when a disposition to a class vests in right or possession, takes, if answering to the description of the class.

When posthumous child to take as one of a class.

SEC. 497. When applying a will it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will, or from extrinsic evidence; but evidence of the declarations of a testator as to his intention cannot be reeceived.

Correction of mistakes or ommissions in wills.

SEC. 498. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

Of devises or bequests on attaining majority.

SEC. 499. A testamentary disposition when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

How a vested disposition of testator may be divested.

SEC. 500. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section —.

Effect of death of legatee or devisee during lifetime of testator.

SEC. 501. The death of a devisee or legatee of a limited interest, before the testator's death, does not defeat the interests of persons in remainder, who survive the testator.

Death of legatee or devisee of limited interest.

SEC. 502. A conditional disposition is one which depends upon the occurrence of some uncertain event by which it is either to take effect or be defeated.

"Conditional disposition" defined.

SEC. 503. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

Condition precedent in will defined.

SEC. 504. When a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except when such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

When a testamentary disposition upon a condition precedent vests.

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When condition precedent deemed performed.

SEC. 505. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

"Condition subsequent" defined.

SEC. 506. A condition subsequent is when an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

Owners in common of legacy or devise.

SEC. 507. A devise or legacy given to more than one person vests in them as owners in common.

Advancements on gifts as redemptions.

SEC. 508. Advancements or gifts are not to be taken as redemptions of general legacies, unless such intention is expressed by the testator, in writing.

CHAPTER XVIII.—GENERAL PROVISIONS.

SEC. 509. Legacies are distinguished and designated according to their nature, as follows:

Of legacies.

First. A legacy of a specific thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator.

Second. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole in part, resort may be had to the general assets, as in case of a general legacy.

Annuities.

Third. An annuity is a bequest of certain specific sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in a case of general legacy.

Residuary legacy.

Fourth. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

Fifth. All other legacies are general legacies.

Liability of property of intestate for debts.

SEC. 510. When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the code of civil procedure.

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SEC. 511. The property of a testator, except as otherwise specially provided for in this code and the code of civil procedure, must be resorted to for the payment of debts, in the following order:

First. The property which is expressly appropriated by the will for the payment of the debts;

Second. Property not disposed of by the will;

Third. Property which is devised or bequeathed to a residuary legatee;

Fourth. Property which is not specifically devised or bequeathed; and

Fifth. All other property ratably.

Order in which property of testator shall be taken to pay debts.

Before any debts are paid the expenses of the administration and the allowance to the family must be paid or provided for.

SEC. 512. The property of a testator, except as otherwise specially provided in this code and the code of civil procedure, must be resorted to for the payment of legacies, in the following order:

First. The property which is expressly appropriated by the will for the payment of the legacies.

Second. Property not disposed of by the will.

Third. Property which is devised or bequeathed to a residuary legatee.

Fourth. Property which is not specifically devised or bequeathed.

Order in which property of testator shall be taken to pay legacies.

SEC. 513. Legacies to husband, widow, or kindred of any class, are chargeable only after legacies to persons not related to the testator.

When legacies to kindred chargeable.

SEC. 514. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

Abatement between legacies.

SEC. 515. In a specified devise or legacy, the title passes by the will; but possession can only be obtained from the personal representative, and he may be authorized by the judge of the probate court to sell the property devised and bequeathed in the cases herein provided.

Title by specific devise.

Possession — how obtained.

SEC. 516. The rights of a purchaser or incumbrancer

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of real property, in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the probate court having jurisdiction thereof, or unless written notice of such devise is filed with the clerk of the county where the real property is situated, within four years after the devisor's death.

When right of purchaser or incumbrancer impaired by devise.

SEC. 517. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal represenative, an inventory of the property, expressing that the same is in his custody for life only, and that on his decease it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

How specific legacy for life transmitted to second legatee.

SEC. 518. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

Bequest of income to accrue from testator's death.

SEC. 519. A legacy or a gift in contemplation, fear, or peril of death, may be satisfied before death.

Legacy or gift may be satisfied before death.

SEC. 520. Legacies are due and deliverable at the expiration of one year after the testator's death; annuities commence at the testator's decease.

Legacies and annuities—when due.

SEC. 521. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

Interest on legacies.

SEC. 522. The four preceding sections are in all cases to be controlled by the testator's express intention.

Four preceding sections—how controlled.

SEC. 523. When it appears by the terms of a will that it was the intention of the testator to commit the execution thereof, and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary, in like manner as if he had been named executor.

Expressed intention of testator to govern as to executor though executor not named.

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Executor not to appoint executor.

SEC. 524. An authority to an executor to appoint an executor is void.

When power of executor commences.

SEC. 525. No person has any power as an executor, until he qualifies, except that before letters have been issued he may pay funeral charges and take necessary measures for the preservation of the estate.

Provisions that apply to revocation of wills.

SEC. 526. The provisions of this title in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect.

Provisions of this title not to affect wills made before this act takes effect.

SEC. 527. The provisions of this title do not impair the validity of the execution of any will made before it takes effect, or effect the construction of any such will.

Wills affecting property in this territory governed by laws of same.

SEC. 528. The validity and interpretation of wills, wherever made, are governed, when relating to property within this territory, by the law of this territory.

Laws governing interpretation of wills as to real and personal property.

SEC. 529. Except as otherwise provided, the validity and interpretation of wills are governed, when relating to real property within this territory, by the law of this territory; when relating to personal property, by the law of the testator's domicile.

Liability of persons taking under will.

SEC. 530. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the code of civil procedure.

CHAPTER XIX.—SUCCESSIONS.

Term "succession" defined.

SEC. 531. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

To whom property of intestate passes.

SEC. 532. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court for the purposes of administration.

Term "personal representative" defined.

SEC. 533. The personal representative of the decedent within the meaning of that phrase as used in the preceding section, is the duly qualified and acting execu-

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tor, administrator, or administrator with the will annexed, of the estate of the decedent.

Distribution of property of intestate and order of succession.

SEC. 534. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the code of civil procedure, subject to the payment of his debts, in the following manner:

First. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife and more than one child living, or one child living, and the lawful issue of one or more deceased children, one-third to the husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of his representation; but if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and to the issue of the deceased child or children by right of representation.

Second. If the decedent leave no issue, then the estate goes in equal shares to the surviving husband or wife, and to the decedent's father. If there be no father, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If he leave a mother also, she takes an equal share with

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the brothers and sisters. If the decedent leave no issue, nor husband nor wife, the estate must go to his father.

Third. If there be no issue, nor husband, nor wife, nor father, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If a mother survive, she takes an equal share with the brothers and sisters.

Distribution of property of intestate and order of succession.

Fourth. If the decedent leave no issue, nor husband, nor wife, nor father, and no brother nor sister is living at the time of his death, the estate goes to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters.

Fifth. If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole goes to the surviving husband or wife.

Sixth. If the decedent leave no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through diferent ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote; however,

Seventh. If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

Eighth. If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent, descends to the issue of all other children of

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the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

When estate escheats to the territory.

SEC. 535. If the decedent leave no husband, wife, or kindred, the estate escheats to the territory for the support of common schools.

When an illegitimate child is an heir.

SEC. 536. Every illegitimate child is an heir of the person who, in writing signed in the presence of a competent witness, acknowledged himself to be the father of such child; and in all cases is an heir of his mother, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if it had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family, in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate and without issue, the others inherit his estate, and an heir, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages will, in law, or dissolved by divorce, are legitimate.

Succession of property of illegitimate child dying intestate and without issue.

SEC. 537. If an illegitimate child who has not been acknowledged or adopted by his father, dies intestate without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law.

Degree of kindred.

SEC. 538. The degree of kindred is established by the number of generations, and each generation is called a degree.

Lineal and collateral consanguinity.

SEC. 539. The series of degrees forms the line; the series of degrees between persons who descend from one another, is called direct or lineal consanguinity; and the

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series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line, or collateral consanguinity.

Division of lines ascending and descending.

SEC. 540. The direct line is divided into a direct line descending, and a direct line ascending. The first is that which connects the ancestor with those who descend from him; the second is that which connects a person with those from whom he descends.

Degrees of direct line.

SEC. 541. In the direct line there are as many degrees as there are generations. Thus, the son is with regard to the father in the first degree; the grandson in the second; and *vice versa* with regard to the father and grandfather, towards the sons and grandsons.

Collateral line—how reckoned.

SEC. 542. In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. On such computation the decedent is excluded, the relation included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins-german in the fourth, and so on.

Inheritance of kindred of half-blood.

SEC. 543. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor must be excluded from such inheritance.

Advancement to lineal descendant subject to distribution.

SEC. 544. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child or other lineal descendant towards his share of the estate of the decedent.

Rule in which one receiving an advancement shall be charged with same.

SEC. 545. If the amount of such advancements exceeds the share of the heir receiving the same, he must be excluded from receiving any further portion in the division and distribution of the estate, but he must not

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be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

When gift or grant made as advancement.

SEC. 546. All gifts and grants are made as advancements, if expressed in the gift or grant to be made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such by the child, or other successor or heir.

Rule to value advancement.

SEC. 547. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof, made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value, in the division and distribution of the estate, otherwise it must be estimated according to its value when given, as nearly as the same can be ascertained.

Lineal descendants of person receiving advancement to be charged with same.

SEC. 548. If any child or other lineal descendant, receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancements had been made directly to them.

Application of preceding section to husband and wife.

SEC. 549. The provisions of the preceding section of this title as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedent.

To whom property goes on death of wife.

SEC. 550. Upon the death of the wife the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree for her support and maintenance, which portion is subject to her testamentary disposition; and in the absence of such disposition goes to her descendants or heirs, exclusive of her husband.

SEC. 551. Upon the death of the husband one-half of the community property goes to the surviving wife,

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and the other half is subject to the testamentary disposition of the husband; and in the absence of such disposition goes to his descendants, equally, if such descendants are in the same degree of kindred to the decedent, otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration.

Distribution of community propertyon death of husband.

SEC. 552. Inheritance or succession "by right of representation" takes place when the descendants of any deceased take the same show, or right, in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

When inheritance by right of representation takes place.

SEC. 553. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisons of this title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession, unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

Right of succession of resident alien.

Right of succession of foreigner.

SEC. 554. When succession is not claimed as provided in the preceding section, the district court, on information, must direct the district attorney of the district in which the property is situated to reduce the property to his or the possession of the territory, or to cause the same to be sold, and the same or the proceeds thereof to be deposited in the territorial treasury for the benefit of such non-resident foreigner or his legal representatives, to be paid to him whenever, within five years after such deposit, proof to the satisfaction of the territorial auditor and treasurer is produced that he is entitled to succeed thereto.

Proceeding in district court if property not claimed under last section.

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Voucher of treasurer when property claimed.

SEC. 555. When so claimed, the evidence and the joint order of the auditor and treasurer must be filed by the treasurer as his voucher, and the property delivered, or the proceeds paid to the claimant on filing his receipt therefor. If no one succeeds to the estate or proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the territory, and is placed by the territorial treasurer to the credit of the school fund.

When property of decedent escheats to territory.

Charges against real property passing to territory under last section.

SEC. 556. Real property passing to the territory under the last section, whether held by the estate or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession.

Liability of successor to decedent's estate.

SEC. 557. Those who succeed to the property of a decedent are liable for his obligations, in the cases and to the extent prescribed by the laws of this territory.

Repealing clause.

SEC. 558. That an act entitled "An Act in relation to administrators and executors" (general and miscellaneous laws), codified statutes, save and except sections 293, 294, 295, 296, 297, 298, and 299 thereof, be and the same are hereby repealed: *Provided*, That the provisions of said act shall be and remain in force so far as, and shall be applicable to all estates now in course of administration, and upon which letters testamentary or administration have issued to the settlement and winding up of such estates, and the discharge of the executor and administrator therein, so far as such act may be applicable and provide for; but in any matter or thing for which said act may contain no provision the provisions of this this act shall be applicable.

Saving clause.

How far applicable to estates in course of administration.

When act to take effect.

SEC. 559. This act shall take effect on the first day of July, A. D. 1877, and the act mentioned in the last preceding section shall continue in force until the date last aforesaid.

Approved February 16th, 1877.

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NOTARIES PUBLIC.

AN ACT to amend section 10 of an act concerning notaries public, approved February 8th, 1876 (session laws, 1876, page 115).

SECTION 1. Be it enacted by the legislative assembly of Montana territory, that section 10 of an act concerning notaries public, approved February 8th, 1876, be amended so as to read as follows: "SECTION 10. Every applicant for the commission of notary public shall give bond to the territory of Montana in the penal sum of one thousand dollars, with two good and sufficient sureties, to be approved by the clerk of the county in which said applicant resides, conditioned for the true and faithful performance of the duties of his office; and upon the filing of such bond in the office of the governor of the territory of Montana, the said governor may issue to said applicant a commission as notary public, for which commission a fee of one dollar shall be paid into the territorial treasury: *Provided*, That when the applicant resides in an unorganized county, his bond shall be approved by the clerk of the county to which it is attached for judicial purposes."

SEC. 2. That section 10 of the above entitled act is hereby repealed.

SEC. 3. That this act shall take effect and be in force from and after its passage.

Approved February 9th, 1877.

RAILROAD—HELENA AND BENTON.

AN ACT to facilitate the construction of the Helena and Benton Railroad.

WHEREAS, Under the provisions of an act entitled "An Act to authorize the counties interested to assist in building a railroad from the head of navigation on the Missouri river, at or near Fort Benton, to the city of Helena, Montana territory," approved February 11th, 1876, S. B. Coulson & Co., on the 28th day of August, A. D. 1876, submitted a proposition to the respective counties of this territory to build and construct such railroad, which proposition was duly submitted to the legal voters of the counties of Lewis and Clarke and Choteau; and,

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WHEREAS, The county of Lewis and Clarke, aforesaid, did, at the general election held after the approval of said bill, vote an issue of three hundred and fifty thousand dollars, in bonds of said county, to aid in the construction of such road under said proposition of S. B. Coulson & Co.; and,

WHEREAS, The legal voters of said Choteau county, at said general election, did vote for an issue of eighty thousand dollars of bonds for said purpose; and the total amount, viz: seven hundred thousand dollars, of bonds not having been yet voted by the said counties of Montana territory interested in the construction of said road, and which were required to insure its construction; therefore,

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the action of the respective boards of county commissioners of Lewis and Clarke and Choteau counties, in submitting the said proposition of said S. B. Coulson & Co. to the legal voters of said several counties, and the voting of the said several issues of said bonds, under the said proposition, to aid in construction of the said road, be, and the same are hereby, declared legal and valid.

SEC. 2. That the second section of said act shall be amended to read as follows: "The board of county commissioners of any county of the territory of Montana are hereby authorized, and it shall be their duty, and they are hereby required, upon the petition of a number of qualified voters of any county equal to one-seventh of the votes cast at the last general election held in said county, within the limits of said county, which petitioners shall be *bona fide* residents and tax payers upon real or personal property of said county, to submit to the legal voters of their respective counties a proposition to issue county bonds of any such county, for an amount designated in such petition, to aid in the construction of such railroad, not to exceed twenty per cent of the amount of assessed value of the taxable property in such county, to be determined by the assessor's returns made the year previous to submitting such proposition, to said S. B. Coulson & Co., or to their order or assigns, in accordance with their said proposition, so made as aforesaid: *Provided*, That the whole amount of bonds to be issued shall not exceed the sum of seven hundred thousand dollars."

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SEC. 3. The mode of submitting such question to the voters of such counties shall be as follows: The county commissioners of any county submitting such proposition shall cause to be published in a newspaper published in such county, for at least four weeks before such question shall be submitted to vote, or, in case there shall be no newspaper published in such county, they shall cause to be posted in a conspicuous place in each election precinct in such county a printed notice to the voters thereof, which notice shall be substantially as follows, viz:

"Notice is hereby given, that on the ———— day of ————, A. D. 1877 (the time when such election shall be held), an election will be held at the several places in the county of ——— where elections are appointed by law to be held, in accordance with an act of the legislative assembly of the territory of Montana, entitled 'An Act to authorize the counties interested to assist in building a railroad from the head of navigation on the Missouri river, at or near Fort Benton, to the city of Helena,' approved February 11th, 1876, and the act amendatory thereto, at which election the legal voters of said county will vote upon the proposition to issue bonds to S. B. Coulson & Co., payable to them or to their order or assigns, for the following amount, and to be issued in the manner and upon the conditions following, viz:

"*First.* The total amount of the bonds proposed to be issued, —— thousand dollars.

"*Second.* That such bonds bear interest at the rate of seven per cent per annum, payable semi-annually after their date and delivery.

"*Third.* That such bonds be made payable in twenty years after their dates, respectively, and at the option of the county after five years from their date.

"*Fourth.* That such bonds be issued to S. B. Coulson & Co., or to such company or corporation as may be by them organized under the laws of Montana territory.

"*Fifth.* That such bonds be issued and delivered as aforesaid, *pro rata*, on the completion and equipment of each section of fifteen miles of said railroad, and in the proportion that each of such sections bears to the total length of said road, as the same shall be surveyed and located, and the said sum of ——— dollars, and that when the whole road shall be fully completed and equipped, the balance of said bonds be delivered as aforesaid.

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"At which election the ballots of those voting in favor of said proposition must contain the words, '*Helena and Benton Railroad Subsidy—Yes,*' and those voting against the said proposition, the words, '*Benton and Helena Railroad Subsidy—No.*' That said election will be open at eight o'clock in the morning and continue open until six o'clock in the afternoon of the same day.

"Dated this —— day of ——, A. D. 1877.

[Signed] "A——— B———,

"*Clerk of the Board of County Commissioners.*"

And in case a majority of the legal voters of such county, voting at such election, shall vote in favor of issuing such bonds, then it shall be the duty of the board of county commissioners to cause to be issued to such company or corporation, to be organized as aforesaid by them, the amount of county bonds, and in the manner and at the time or times mentioned in the notice, and in no other manner, except as hereinafter specified: *Provided,* That in case any two or more counties shall, by such vote, authorize the issuing of more bonds, in the aggregate, than said sum of seven hundred thousand dollars, then such county commissioners of each county shall only issue the amount of bonds, *pro rata,* as is authorized by section 2 of this act; but no obligation incurred by any county heretofore having voted to aid the said road, or which may hereafter vote to aid said road, shall be binding unless the said S. B. Coulson & Co., or their assigns, shall commence the said road and its construction as soon as February 1st, 1878, and shall complete the same within two years thereafter.

SEC. 4. The question as to the issuing of county bonds, as above provided, may be submitted as aforesaid to the electors of any county such within sixty days after the presentation of the petition to the county commissioners provided for in section 2, and the respective boards of county commissioners are hereby required to submit the same to the voters of such counties within said time: *Provided,* That the county commissioners of any county in which bonds have been voted to aid said railroad may, upon petition as provided in section 2, be required to submit the proposition of issuing additional bonds in further aid of such railroad to the legal voters of said county, which second submission shall be made in

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the same time and manner, subject to the same conditions, as provided for the first submission, to the legal voters of said county.

SEC. 5. Whenever the board of county commissioners of any county shall submit to a vote of the electors thereof the question of giving county bonds in aid of said road, there shall be separate ballot boxes and separate poll books for receiving and entering the votes cast on such question, and such ballots or votes shall contain the words, "*Benton and Helena Railroad Subsidy— Yes;*" or "*Benton and Helena Railroad Subsidy—No;*" and no person shall vote on such question except such persons as were, at the time of the submission of such proposition, as provided for in section 3 of this act, actual residents and electors of such county, and the same rules, regulations, liabilities, and penalties prescribed by law for the conduct of general elections, and liabilities of officers and electors therefor, shall be observed and enforced at such election herein provided for; and the judges of such election shall truly certify and forward the result thereof, together with the poll books and ballots so cast, to the board of county commissioners or county clerk, at the county seat of such county, in the manner provided by law for election returns at general elections; and the board of county commissioners shall canvass such returns in the same manner as is or may be provided by law concerning canvassing returns of elections of county officers. But no proposition shall be submitted or enforced permitting any bonds to be delivered for any mile of road which shall not be, at the time of delivery of said bonds, fully completed and equipped. Upon the failure on the part of any officer or officers herein named to perform the duties prescribed by this act, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not less than five hundred or more than five thousand dollars, and be imprisoned in the county jail not less than six months nor more than ten months.

SEC. 6. Whenever the parties, corporation, or association of individuals undertaking the construction of said line of road shall have completed any section of fifteen miles in length of such road, and equipped the same with engines and rolling stock, and shall desire to receive a portion of the aid so voted, they shall make application for the same to the several counties guaranteeing such

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aid, and apply to the governor of the territory in writing to designate and appoint one citizen from each county so guaranteeing the same, to act as commissioners, and, upon receiving such written notice, the governor shall at once designate one commissioner from each of said counties, who shall be citizens of the territory of Montana, disinterested and impartial men, whose duty it shall be to go, at the expense of said association, company, or corporation, and examine and measure that portion of said line of railroad which may be completed, and make a report in writing, under oath, of the result of such examination, and if a majority of such commissioners shall find, on such examination, that said road, as constructed, complies with the requirements of this act, they shall so state in their report to the governor.

SEC. 7. Upon the receiving of any such report of such commissioners made to the governor, under oath, that the said company, association, or corporation have complied with the provisions of this act, and have completed any section of said road, and equipped the same as required by this act, the governor shall immediately thereafter notify the several contributing counties, and the several county commissioners shall immediately thereafter issue, or cause to be issued, the *pro rata* of the bonds so voted by said counties respectively, and deliver the same to the agent or representative of said company, association, or corporation, taking receipt for the bonds so delivered.

SEC. 8. And thereafter, on the completion of each section of fifteen miles of such road, the said company, association, or corporation may apply as aforesaid for the bonds to be issued to them under the said act, in manner provided in the preceding section, and commissioners shall be appointed and first make a report, as is above provided, and thereupon the *pro rata* of bonds to which they may be entitled at such time and times shall be issued and delivered to them. The duties of said commissioners shall be the same, and their report made in the same manner, as provided for in the preceding section of this act, and upon the full completion and equipment of said railroad, and upon like application and report, the remainder of the bonds so to be issued shall be issued and delivered to them.

SEC. 9. There shall be levied and collected by such company,

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association, or corporation, upon each ton of two thousand pounds of any and all goods, wares, merchandise, and other freights carried and transported on said road, a tax of one dollar and fifty cents per ton, and at the same rates for all quantities less than one ton and exceeding one hundred pounds, which, when so collected, shall be paid by said company, association, or corporation into the treasury of the territory of Montana on the first day of each and every month; which sum, when so collected, shall be distributed and paid by the territorial treasurer to the several counties voting aid, as aforesaid, *pro rata* upon the amount so voted by them, and shall be by them applied solely and exclusively to the payment of the interest to become due on said bonds so issued, and the principal as said bonds shall mature. And if at any time the amounts so received by said counties shall be more than sufficient to pay the interest on said bonds, the excess shall be and constitute a sinking fund, applicable to the payment of the principal of said bonds as they may become due and payable. The said company, association, or corporation shall, at the time of each monthly payment, make a statement to the territorial treasurer, under oath of the president or managing agent of said company, of the amount of freight so carried and transported over said road, and the amount of the tax thereon collected in accordance with the provisions of this act, together with the names of the persons from whom such tax was collected, and the amount so collected from each, which report shall be filed in the office of said territorial treasurer, and preserved for public inspection. And if said statement so sworn to shall be false in any material respect, the person making the same shall be guilty of wilful and corrupt perjury, and shall be punished accordingly. All railroads constructed with the same width of track within this territory shall have the privilege with its road to intersect and connect with or cross the road herein provided for, and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination.

SEC. 10. The rates of freight, for all goods, wares, and merchandise, ores, or bullion transported over the railroad from Helena to Benton, or from Benton to Helena, shall not exceed $8.00 per ton, except for hides and wool, the freight on which shall not exceed $12 per ton.

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SEC. 11. All taxes levied and assessed by any county or counties upon the said road shall be collected in the same manner as other taxes are or may be collected, and shall be paid into the territorial treasury, and when so paid the total amount of the respective sums so paid in shall be distributed and paid by said treasurer to the several counties voting aid, as aforesaid, to said road, *pro rata* upon the amount so voted by said counties respectively: *Provided, however,* That whenever the amount of taxes collected on freights and distributed under the provisions of section 9 of this act and the amount of taxes collected and distributed under the provisions of this section to the several counties voting such aid shall in the aggregate equal the amount of the bonds and interest thereon issued to such company, association, or corporation, the collection of the tax on freights shall cease to be levied and collected by said company, association, or corporation, and the payment of taxes levied and collected by any county or counties upon said road shall not any longer be required to be paid to the territorial treasurer or distributed.

SEC. 12. It is hereby made the duty of the territorial treasurer from time to time, and as often as any money shall be paid into the territorial treasury in accordance with the provisions of sections 9 and 11 of this act, to estimate the amount that each county shall be entitled to of the same under the provisions aforesaid, and to pay over to the several treasurers of the counties entitled to the same their proportion of said moneys as above specified, taking receipts therefor.

SEC. 13. The moneys paid to the several counties under the provisions of said sections shall be applied solely and exclusively to the payment of the interest on the bonds so issued, as the same shall become due and payable, and to the payment of the principal sums secured thereby, as the same shall respectively mature. If said sums of money so received shall not be sufficient to pay interest on the bonds issued by any county, it shall be the duty of the board of county commissioners to provide for such interest by a levy of a tax therefor, which shall be levied in said county as other taxes.

SEC. 14. It shall not be lawful for any county to assess or cause to be assessed the road bed and track of such road, lying within any such county, at a greater valuation than five thousand dollars per mile.

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SEC. 15. Before any money, under the provisions of sections 9 and 11, aforesaid, shall be paid to the treasurer of any county entitled thereto, said treasurer shall execute a bond in accordance with the provisions of sections 87 and 88 of Article VI. of Chapter XXI. of the codified laws of this territory, in an amount equal to five per cent of the aid which his county has granted to such railroad, conditioned for the faithful performance of his duty under this act, and the payment of all moneys which shall be received by him thereunder. That the treasurers of the several counties voting such aid shall be entitled to receive on all sums of money coming into their hands under the provisions of this act, five per cent on all amounts not exceeding three thousand dollars, and on all amounts over three thousand dollars two and one-half per cent.

SEC. 16. It shall be the duty of said treasurer to render a just and true account of all moneys coming to his hands under the provisions of this act, and to pay the same out as required by law.

SEC. 17. The acceptance by the said S. B. Coulson & Co., or their assigns, or of the company by them or some of them organized, of any aid authorized to be given under this act, shall be deemed their acceptance of the same upon the terms herein specified, and a ratification of the conditions in this act contained.

SEC. 18. The said road shall start from and at the said town of Fort Benton, on the Missouri river, and run from that place to the said town of Helena, within a distance of one mile of the town of Sun River, by the most direct and practicable route.

SEC. 19. If the said S. B. Coulson & Co. shall not proceed to construct said road upon the amounts in their proportion being voted, or if the entire sum so voted shall not be secured from the various counties, and the said S. B. Coulson & Co. will not, before February 1st, 1878, accept the sum voted, and thereafter without unnecessary delay proceed to construct said road, and any other responsible company will accept the amount voted, and, according to the conditions and terms of this act, and the act to which this is amendatory, proceed to construct the same as is by law prescribed, then the boards of the county commissioners of the several counties having contributed, or voted to contribute, to the construction of said road, may meet at Helena, and determine whether they will substitute any other company than the said S. B. Coulson & Co., and if so, what other company shall be substituted; and at such

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meeting each county shall have three votes, to be cast by its commissioners or commissioner present, and such counties, upon said proposition, shall each vote by themselves; and if at such meeting any county shall refuse to consent to such substitution, the proposition shall be re-submitted to the electors thereof, as to such substitution, in a manner to be by such commissioners prescribed; and, if ratified, the said substitution shall be deemed and considered binding upon such county.

SEC. 20. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

RAILROAD—NORTH AND SOUTH.

AN ACT to aid the construction of a railroad to Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That for the purpose of securing railroad communication with the several states, the territory of Montana in the form and manner, and upon the conditions and contingencies hereinafter in this act provided, hereby accepts the proposition of Oliver Ames, E. Atkins, Sidney Dillon, Jay Gould, F. Gordon Dexter, S. Richardson, and Royal M. Bassett, to build a railroad into said territory, made on the 23d day of December, 1876, at New York city, which said offer and proposition is as follows, to-wit:

To the Honorable Legislative Assembly of the Territory of Montana:

We submit to you the following proposition, to-wit:

First. That we will undertake, in consideration that such a subsidy as hereinafter named is voted, to build a narrow-gauge road of the width of the Utah Northern railroad, starting at Franklin. After obtaining a survey of the contemplated route to run the road to Montana, and to terminate at a point in Montana, as far north as the mouth of the Big Hole river, and said railroad to be completed at the rate of one hundred miles per year from and after the commencement of the same.

Second. That the said road shall be supplied with all the necessary rolling stock to do and transact the business of said road as it progresses.

Third. That the said road will be called the Utah Northern Extension railroad, and be constructed as above named, in consid-

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eration of your territory granting to the individuals or incorporation building said road, bonds to the amount to $1,500,000, basing the entire length of the road at three hundred miles, which would be built under and pursuant to this proposition.

Fourth. That the amount of bonds to which the said subscribers or corporation shall be entitled, when the whole road is constructed, shall be issued and placed in *escrow* in the city of New York; but only to be delivered in accordance with the provisions hereinafter contained.

Fifth. That said bonds shall draw interest at the rate of eight per cent per annum, payable in New York city semi-annually, provided that interest shall only be computed from the time of each delivery thereof to the parties engaged in the construction of said road.

Sixth. That the construction of said road shall commence at the said point mentioned — Franklin — and continue towards the said designated terminus; and that from the said place of commencement to the said terminus line in Montana, there shall be delivered and paid over, upon the construction and opening for freight and passengers, of every twenty miles of said railroad from said starting point, the *pro rata* proportion of bonds — that is to say $5,000 per mile.

Seventh. The depository of said bonds shall be in the city of New York, to be fixed and agreed upon by mutual consent of parties in interest, and the work of constructing said road shall be commenced within sixty days after the bonds shall be deposited as above stated. The foregoing proposition is made in good faith and with the intention of building the said road if the aid asked for is granted by your territory. We are satisfied of our ability to construct the road within the time and in the manner above named.

All of which is most respectfully submitted to your honorable body to act upon.

Dated at New York, this 23d day of December, 1876.

OLIVER AMES.
E. ATKINS.
SIDNEY DILLON.
JAY GOULD.
F. GORDON DEXTER.
S. RICHARDSON.
ROYAL M. BASSETT,
President U. N. R. R. Co.

But subject to the variations in this act provided.

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SEC. 2. That for the purpose of aiding in the construction of said railroad to run from Franklin, in the territory of Idaho, to and into the territory of Montana, to a point within five miles of the mouth of the Pipestone creek, Jefferson county, and upon the west bank of Jefferson river, and to the town of Helena, in the county of Lewis and Clarke, the sum of $1,700,000 is hereby contributed by the territory of Montana, to be paid when the coupon bonds of said territory shall become due which are hereby authorized to be issued in the manner and on the same terms provided in this act: *Provided*, That none of said bonds shall be delivered to any corporation, person or persons, for any purpose whatever, except upon the terms and in the manner provided in this act; but this section is subject to the variation contained in section 21 of this act.

SEC. 3. That such railroad shall be built from the said town of Franklin, along and over the nearest and most paracticable route to a point within five miles of Pipestone creek, in the county of Jefferson, on the west side of Jefferson river, within three years from the first day of July, 1877, to the point named in section 2 of this act, and shall be built of good and substantial material, and of a gauge not less than three feet in width and not more than four feet eight and one-half inches in width. Such railroad shall be finished from said town of Franklin to the terminus aforesaid within three years from the first day of January, 1878.

SEC. 4. The bonds that may be issued under the provisions of this act shall be coupon bonds of the territory of Montana, payable at the city of New York, in the state of New York, twenty years from the date of their issue, and at any time within ten years after the date of their issue at the pleasure of said territory. Said bonds shall bear interest at the rate of seven and three-tenths per cent per annum, shall be dated as hereinafter provided, and shall draw interest from the date thereof. There shall be attached to each bond a coupon for each installment of interest thereon, and the interest shall be due and payable on the first day of January of each year at said city of New York. Each coupon which is due at the time of the delivery of said bond shall, before the delivery of the bond, be detached therefrom, returned to the treasurer of the territory, and by him be cancelled and destroyed in the presence of the governor, and all interest which shall have accrued upon any coupon, but

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which coupon is not wholly due, shall be indorsed upon such coupon before delivery, or, if the parties named in section 1 of this act prefer, they may pay to the treasurer of the territory the accrued interest on such coupon and the same shall be delivered in that case without indorsement thereof.

SEC. 5. Said bonds shall be signed by the treasurer and auditor of said Montana territory, and shall be sealed and countersigned by the secretary of said territory, and when thus issued, shall be deposited by the treasurer of said territory with the Farmers' Loan and Trust Company in New York city, or such person or persons, company, corporation, or association of persons as the governor and treasurer of Montana and the persons named in section 1 of this act who may accept of the terms thereof shall agree upon.

SEC. 6. The bonds herein provided to be issued by the territory of Montana shall be procured by the auditor of said territory, and he shall have the same lithographed or engraved at the lowest possible cost, which shall be paid out of the general fund of said territory, by warrant drawn by said auditor upon the territorial treasurer. Said bonds shall be of the denomination of one thousand dollars each, and five hundred of said bonds shall be dated July 1st, 1877; five hundred of said bonds shall be dated January 1st, 1878; two hundred of said bonds shall be dated July 1st, 1878; and five hundred of said bonds shall be dated January 1st, 1879.

SEC. 7. The railroad herein provided for shall be constructed by the corporation or association of individuals undertaking the same, by sections, as follows: The first section to commence at the said town of Franklin and terminate at or near Fort Hall, in the territory of Idaho, and shall be fifty miles in length, and thereafter each section northerly on said road shall be twenty-five miles in length.

SEC. 8. The corporation or association of individuals who shall accept the terms of this act, and undertake the construction of said railroad, under the provisions hereof, shall not be entitled to receive any of the bonds of said territory, herein provided for, until they shall have constructed and placed in good running order, with the full equipment of engines and rolling stock, section number one of said road, and when the said corporation or association of individuals undertaking the construction of said line of road shall have

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completed said section number one, and equipped the same with sufficient engines and rolling stock, and shall desire to receive a portion of the aid hereby guaranteed, they shall make application for the same to the governor of the territory, in writing, who, upon receiving such written application, shall at once designate three commissioners, who shall be citizens of the territory of Montana, disinterested, impartial men, whose duty it shall be to go, at the expense of said railroad corporation or association of individuals, and examine and measure that portion of said line of railroad which may be completed, and make report in writing to the governor under oath, of the result of their examinations, and if they shall find on such examination that said road, as constructed, complies with the requirements of this act, they shall so state in their report to the governor. Upon receiving the report of said commissioners, made to the governor under oath, that the said corporation or association of individuals has complied with the provisions of this act and has completed section number one of said road, and equipped the same as required by this act, the governor shall immediately thereafter make his order on the territorial auditor, directing him to order the person or persons, association, company, or corporation with whom said bonds are deposited for delivery, to deliver to the persons named in section 1 of this act, or the five or more who may accept the same, or their assigns, the amount of said bonds to which they may be entitled, less any coupons for interest which may be due and any interest which may be due at the date of such order, and less twenty-five per cent of the amount of said bonds reserved as security; and thereupon the auditor shall deliver to the governor such order, who shall deliver the same to the agent or representative of said railroad, corporation, or association of individuals, or their assigns. The amount shall be ascertained by dividing the said sum of one million seven hundred thousand dollars by three hundred and eighty and then multiplying the quotient by the number of miles in said first section. The remaining twenty-five per cent of said amount to be retained on deposit as hereinafter provided by said territory as an assurance of future good faith upon the part of said corporation or association of individuals, and their compliance therewith. Upon presentation to the said Farmers' Loan and Trust Company, or other depository chosen under section 5 of

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this act, of the order of the auditor of the territory aforesaid, endorsed by the governor with his approval, the said Farmers' Loan and Trust Company, or other depository, shall detach from said bonds all coupons which were due at the date of said order, and shall endorse upon any coupon not due, but upon which interest had partially accrued at the date of said order, the amount of interest which at the date of said order had accrued and the amount so endorsed shall be considered as having been paid; or, if the individuals or company building said road shall prefer to pay, and shall pay to such depository, for the benefit of the treasury of Montana, the amount of interest due upon said coupon at the date of said order, the same shall not be endorsed thereon as aforesaid, and thereupon such bonds as are specified in said order shall, less the detached coupons, be delivered to the party entitled thereto. That thereafter, when the said corporation or association of individuals shall have completed the second section of said road, they may apply to the governor for the aid they are entitled to under this act, and such application shall be made in the manner provided in this section, and commissioners shall be appointed and first make a report, as is above provided. Their duties shall be the same, and their report made in the same manner, and as provided in this section, and thereupon there shall be delivered to the said corporation, or persons, or their assigns in the same manner as heretofore provided, bonds equal to eighty-five per cent of the amount due for the construction of section number two so completed, to be estimated in the same manner provided in this section. The said territory reserving the remaining fifteen per cent until the completion in the same manner of the said road, and after the completion of the third section of said road, bonds shall be delivered in like manner for the eighty-five per cent of the amount due upon the third section of said road, at the same rate as hereinbefore provided, and so on until the road shall be finally completed, when the balance of the amount of bonds due thereon, being the twenty-five and fifteen per cent reserve as above provided, shall be fully paid over to said company in the same manner as hereinbefore provided. The said past due coupons to be detached and those partially due to be paid or endorsed as above provided, and if more bonds shall have been deposited with said Farmers' Loan and Trust Company or selected depository than are

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necessary to pay the aid herein granted, the same shall be returned to the auditor, and shall by him, in the presence of the treasurer and governor, be registered, cancelled, and destroyed by being burned, and report thereof shall be made to the succeeding legislative assembly.

SEC. 9. It shall be the duty of the parties named in section 1 of this act, or five or more of them, to signify to the governor, in writing, their acceptance of the proposition herein contained, and of the terms and conditions hereof, and of their acceptance of this agreement, on or before the 25th day of March, 1877, and unless they shall do so, or unless they or some one of them, before said date, shall, by telegraph or mail, notify the governor that five or more of the persons named in section 1 of this act have accepted the aid herein specified, on the terms and conditions herein imposed, it shall be his duty, on the first day of April, 1877, to issue his proclamation to the officers of the various counties and the electors of the territory, notifying them of such failure; and if no such notice shall have been sent the governor as in this section provided, no election for the approval or disapproval hereof shall take place, anything in section 15 of this act to the contrary notwithstanding.

SEC. 10. The county commissioners of the several counties shall from time to time levy a special tax, as may be apportioned by the auditor, in the same manner as other taxes are now levied, sufficient in amount to pay the annual interest that may from time to time accrue upon the bonds so issued, as also to provide for the payment of said bonds less any sum which may be in the territorial treasury applicable to such purpose, and the auditor shall signify in writing to the boards of county commissioners of each of the various organized counties of the territory the sum of money which such county shall raise therefor, determining the same by reference to the assessed valuation of property therein for the preceding year; and it shall be the duty of such board to levy a sufficient tax to pay the same, which shall be levied and collected as other taxes are collected and levied, and they shall be paid into the territorial treasury.

SEC. 11. That the bonds reserved by the territory upon the first section of said road, and the other amounts of said bonds reserved from time to time upon the other sections as security for the

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ultimate completion of said road, according to the terms hereof, shall be deposited with the Farmers' Loan and Trust Company, of New York, or other depository, as the depository and trustee of this territory, to be delivered by said bank, persons, or company, when under the provisions hereof said persons or railroad corporation shall be entitled thereto, and at that time, and not before, it shall be the duty of the auditor of this territory to give said corporation an order therefor, as herein provided. But if said corporation shall in any particular fail to do or perform the things herein required, within the terms herein limited, it shall not be entitled to have or receive the bonds so deposited, nor any bonds not delivered at the time such failure shall take place. The said bonds shall be registered by the treasurer in a book to be kept by him for that purpose.

SEC. 12. That nothing herein contained shall prevent the said corporation from building, if they elect, an independent line of railroad from the town of Ogden, in the territory of Utah, immediately or ultimately; but the provisions of this act shall only apply to such portions of said road as shall be constructed from a point north of an east and west line running through the town of Franklin; but if said persons, association, or corporation shall not construct said railroad from Ogden to Franklin, they shall obtain possession of and attach to the road herein provided for, and as a part thereof, the Utah Northern Railroad, and the same shall be operated from said northern terminus in Montana to Ogden as a single road, and with only one rate of freight for each class of freight transported on the entire line of said railroad. The parties named in section 1 of this act, or any five of them, may, for the purpose of constructing said road, organize themselves into a body corporate under any laws of the United States thereto authorizing them, or they may sign and acknowledge the certificate required by section 1 of an act of the legislative assembly of the territory of Montana entitled "An Act to provide for the formation of railroad corporations in the territory of Montana," passed in 1873, before any officer in said act mentioned, or before any person in any other state or territory of the United States commissioned by the laws of this territory as commissioner of deeds in such state or territory, and upon filing the same as is in said act provided, said corporation

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shall be a body corporate thereunder, and may proceed to construct and operate said road.

SEC. 13. The commissioners named in this act shall make their report, and take and subscribe their oath thereto, within the limits of this territory; and if the same is false, they shall be deemed guilty of wilful and corrupt perjury, and shall be punished as is provided by law therefor.

SEC. 14. That nothing herein contained shall be construed to inhibit the territory from causing *ad valorem* taxes to be levied upon the property of said railroad company within said territory as taxes are levied upon other property in this territory; but all taxes so levied shall be paid by said railroad corporation into the territorial treasury, and no portion thereof shall belong to any county in said territory, anything in the laws now in force to the contrary notwithstanding. And the said taxes shall be set aside and constitute a fund for the payment of the interest and principal upon the bonds authorized to be issued under the provisions of this act as the same shall become due and payable. The taxes upon said road shall be *ad valorem* taxes, and they shall be assessed and levied by the same officers as other taxes are by law levied and assessed; but they shall be kept separate and distinct from the other taxes, and shall be reported by the county treasurers of the several counties in which such property of said road may be situate to the treasurer of the territory, and shall be paid into the territorial treasury. That the said persons, company, or corporation receiving the aid herein granted shall make monthly reports of all ores and bullion transported on said road, and the names of the consignors thereof, and the number of passengers transported thereon, and the gross receipts arising from such ores, bullion, and passenger traffic, and shall, in the succeeding month, pay into the territorial treasury one-twelfth of the gross receipts arising from the transportation of said ores and bullion, and one twenty-fifth of the gross proceeds received from such passenger traffic, and the same shall be set aside to pay the interest on the bonds herein authorized to be issued, and to constitute a sinking fund for the ultimate payment of said bonds.

SEC. 15. The county commissioners of the several counties shall give notice of the election herein provided for by publication in one or more newspapers published within such county, at least ten days

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before such election, or, if no newspaper be published therein, the same shall be published in one or more newspapers published in the territory most likely to give general notice; and they shall, at their March session, 1877, or, if not then, they shall convene forthwith thereafter, and they, or a majority of them, shall cause proper poll books to be distributed, and provide for the holding of such election; but the failure of the county commissioners in any county or counties to give said notice shall not be held to invalidate the said election, but the same is hereby appointed to be held on the 10th day of April, 1877, between the hours of eight o'clock A. M. and six o'clock, P. M.; and all general and special laws applicable to the conduct of general elections, not inconsistent herewith, shall be applicable thereto.

SEC. 16. The votes that are cast upon the proposition herein contained, after abstracts of the same shall have been made by the county commissioners of the several counties, and such abstracts shall have been forwarded to the auditor as aforesaid, shall be canvassed in the same manner that the vote for delegate to congress is canvassed under the existing laws. Those votes cast, which read "*North and South Railroad Aid—Yes,*" shall be held and interpreted to be an approval of this act, and those votes which read "*North and South Railroad Aid—No,*" shall be held and deemed to be a disapproval of this act, and the said votes cast thereon shall be counted and canvassed accordingly.

SEC. 17. At the election herein provided for, the ballots or votes shall contain the words, "*North and South Railroad Aid—Yes,*" or "*Northand South Railroad Aid—No,*" and the same rules, regulations, liabilities, and penalties, prescribed for the conduct of other elections, and liability of officers thereof and electors within this territory, shall be observed and enforced at the election herein provided for; and the judges at such election shall truly certify and forward the result of such election, together with the poll books and ballots so cast, to the board of county commissioners to the county seat of said county, within two days after the same shall have been counted and certified, and the county commissioners shall, within ten days thereafter, forward a correct abstract of the votes cast on said proposition at such election to the auditor of the territory; and upon the failure upon the part of any officer or officers

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herein named to perform the duties prescribed by this act, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine not less than five thousand dollars nor exceeding ten thousand dollars, and be imprisoned in the county jail not less than six nor more than ten months.

SEC. 18. If a majority of the votes cast upon the question hereby submitted shall be in approval of this act, in the manner and form provided in sections 16 and 17, it shall be the duty of the governor of the territory to announce such fact by proclamation, to be published in one or more newspapers published in the territory; and thenceforward this act shall be a contract of binding force upon the territory of Montana, and also upon the corporation or association of individuals accepting the same as herein provided, for the fulfillment of which contract in every particular on its part the good faith and credit of the people of Montana territory is pledged.

SEC. 19. That in case this act shall be ratified and confirmed by the electors of this territory in the manner herein provided, and the said corporation or persons shall signify its or their acceptance of the terms of this act, as herein provided, the said corporation or persons shall construct and fully equip, with all necessary rolling stock, at least one hundred miles of the said road before the first day of January, A. D. 1878; and in case of failure so to do, all right of such corporation under the provisions of this act shall be deemed and held forfeited, and it shall have no further claim upon this territory for any bonds herein provided for; and if any one year shall thereafter elapse without one hundred additional miles thereof shall be completed and equipped, or if the said road shall not be wholly completed to its northern terminus before January 1st, 1881, then and in that case the territory shall be absolved from all liability to deliver said bonds not delivered at the time such failure shall take place, and said times limited shall be deemed of the essence of this contract.

SEC. 20. Any county or incorporated city desiring to bridge, grade, or furnish ties for a branch of said road, may, by the duly qualified electors thereof, contribute thereto, upon the proposition and conditional contract entered into therefor, not exceeding two thousand dollars per mile of the distance, which contract shall be made by the city council if of any incorporated city, and by the

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board of county commissioners if of a county, which contracts shall be of no validity unless ratified, in the manner provided by such council or board of county commissioners, by the electors of said city or county; and the method of such submission shall, as near as may be practicable, be the same as is provided in this act for the submission hereof; and the duties of county and election officers, as is herein provided, and all the laws applicable to general elections, shall be as applicable to election officers of an incorporated city or of a county, on such elections, as they are to a general election aforesaid, and all the penalties and restrictions thereby imposed shall be applicable to such elections.

SEC. 21. That the propositions made in the foregoing provisions in this act contained, are made upon the hypothesis and presumption that the distance between the said town of Franklin to a point within five miles of the mouth of the Pipestone creek aforesaid, and to the said town of Helena, by the most direct and practicable route, is three hundred and eighty miles; and if the said distance between the points named, by the most direct and practicable route, exceed the said distance, then the parties named in section 1 of this act shall not be required to build the said road beyond a point which shall be three hundred and eighty miles from Franklin, towards the town of Helena aforesaid, by the most direct and practicable route; and if the distance between the points aforesaid shall be less than three hundred and eighty miles, then the sum mentioned in section 2 of this act shall be decreased proportionally, and all the provisions of this act shall be interpreted in accordance herewith. But in no case shall any territorial aid be granted to exceed the sum of one million and seven hundred thousand dollars.

SEC. 22. This act shall take effect and be in force from and after its passage.

Approved February 16th, 1877.

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ROBBERY—REWARDS.

AN ACT to facilitate the conviction of robbers.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. The governor shall offer a standing reward of three hundred dollars for the arrest of each person engaged in the robbery of, or in an attempt to rob, any person or persons upon, or having in charge, in whole or in part, any stage coach, wagon, railroad train, or other conveyance, engaged at the time in carrying passengers, or any private conveyance within this territory, the reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested, but no reward shall be paid except after such conviction.

SEC. 2. This act shall take effect from and after its passage.

Approved February 16th, 1877.

SCHOOLS.

AN ACT for the benefit of common schools.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That all moneys arising from the sale of town lots under and by virtue of the several acts of the legislative assembly of the territory of Montana relating to town sites, that now is or that may hereafter come into the hands of any probate judge, or the corporate authorities of any city or town of this territory, shall be paid into the county treasury of the county for the use and benefit of the common schools of the school district in which such city or town is situated, to be used as provided for in this act.

Moneys received from sale of town sites by probate judge to go to school fund.

SEC. 2. The county treasurers of the several counties of this territory shall transfer all moneys so paid into said treasury, as provided for in section 1 of this act, or that may now be in such treasury, derived from said source, to the school fund of the school district in which such town is situated, which shall be paid out on the

Duty of treasurer to transfer such moneys to school fund.

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order of the school trustees of such district, as provided for in section 3 of this act; and which said moneys shall be by said treasurer set apart as a special fund for the purpose of building and furnishing school houses, and shall be used for such purpose alone, unless otherwise ordered, as provided for in this act.

To be used in building and furnishing school houses.

SEC. 3. The school trustees of any school district are hereby authorized to draw warrants on said fund named in sections 1 and 2 of this act for the purpose of building and furnishing a school house in such place, in the town or city from the sale of lots out of which such fund arose, as they may designate, which said warrants or orders shall specify the fund on which the same are drawn, and for what purpose drawn.

Trustees may draw warrants on such building fund.

SEC. 4. That said fund may be used for general school purposes, if a majority of the qualified voters of such district shall so elect, and upon the written request of any fifty of the qualified voters of such district, presented to the trustees for such purpose, said trustees shall order an election for such purpose, at which election said trustees shall prepare the form of the ballot used at such election, and which election shall be given notice of and conducted as other elections provided for the several school districts under the general school laws of this territory, and that when any warrant is so drawn on said fund for other purposes than the building and furnishing a school house, said warrant shall so specify that it was pursuant to an election held for such purpose.

When such fund used for general school purposes.

Approved February 15th, 1877.

STENOGRAPHERS.

AN ACT to provide for the employment of stenographers in the district courts.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. The judge of the district court may appoint, whenever in his judgment it will expedite the

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public business, a short-hand reporter, who shall be well skilled in the art and competent to discharge the duties required for the purpose of recording the oral testimony of witnesses in criminal cases, and in civil cases where either of the parties require it, and such other matter as the judge may direct.

Judge of district court may appoint short-hand reporter.

SEC. 2. Such reporter shall take an oath faithfully to perform the duties of his office, which shall be filed in the office of the clerk. He shall attend such sessions of the court as the judge may direct, and may be removed by the judge making the appointment, for misconduct, incapacity, or inattention to duty.

Oath of reporter.

Duty of reporter.

SEC. 3. Such short-hand reporter shall receive compensation as follows: For each day actually employed in court taking testimony, such sum as may be fixed by the judge, not exceeding eight dollars per day, and for making transcripts thereof, for each one hundred and fifty words, fifteen cents. In criminal cases such fees shall be audited and paid out of the county treasury upon a certificate from the judge certifying the amount thereof. In civil cases the fees therefor shall be paid by the party requesting the same, and the amount allowed such reporter shall be taxed as part of the costs.

Compensation of reporter.

SEC. 4. This act shall take effect and be in force from and after its passage.

SUPREME COURT REPORTS.

AN ACT to provide for publishing the reports of the supreme court of the territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That section 3 of the act entitled "An Act to provide for reporting the decisions of the supreme court," approved January 4th, 1872, be amended so that it will read as follows: "Section 3. The reporter of such volume shall print and bind two hundred copies of

Reports of supreme court printed at expense of territory.

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such edition at the expense of the territory: *Provided*, that the same shall be paid for at the rate of six dollars for each volume of six hundred pages, and that each volume of more than six hundred pages shall be paid for at the same rate, and for the number of pages exceeding six hundred, and upon the said reporter leaving at some place in New York a sufficient number of copies to enable said auditor of the territory to send one copy to each state and territory, which place and number shall be designated by said auditor, and depositing a sufficient number of additional copies to make, with the number left, to send to the libraries of the different states and territories, two hundred copies, the said auditor shall issue to the said reporter a warrant for the amount to be found due, as is in this section provided: *Provided*, That the whole expense of publication of a full volume of such reports shall not exceed the sum of fifteen hundred dollars to the territory."

Reports for states and territories.

Proviso.

SEC. 2. The original section 3 of the act to which this is amendatory be and the same is hereby repealed.

Approved February 16th, 1877.

SWINE.

AN ACT in relation to swine.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That hereafter it shall be unlawful for any owner or owners of swine to permit the same to run at large from the first day of April until the first day of November.

Time limited for swine to run at large.

SEC. 2. That the owner or owners of swine are hereby prohibited from letting the same run at large at any season of the year in any town or village in this territory with a population of over one hundred and fifty inhabitants; and any swine so found running at large in any such town or village shall, upon complaint

Not to run at large in any town or village with population of over one hundred and fifty

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being made by any citizen, be seized by the sheriff or any constable of the county, and sold in the same manner as now provided by law for the sale of personal property on execution, and the proceeds thereof shall be paid into the common school fund of the county.

Penalty for violating this act.

SEC. 3. Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of ten dollars for the first offense, and in an additional sum of twenty dollars for each subsequent offense, and shall be liable in damage to any party injured thereby, to be recovered in any court having competent jurisdiction: *Provided*, That the provisions of this act shall not apply to Missoula county.

This act not to apply to Missoula county.

Fines paid into school fund.

SEC. 4. That all fines collected under the provisions of this act shall be paid into the county treasury for the use and benefit of the common schools of said county.

Acts repealed

SEC. 5. That all acts and parts of acts conflicting with the provisions of this act be and the same are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved February 15th, 1877.

TEACHERS' INSTITUTES.

AN ACT to authorize the holding of county teachers' institutes.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Teachers' institutes to be held annually.

SECTION 1. That the county superintendent of common schools in any county in this territory, containing ten or more than ten organized school districts, may, when he believes that the educational interests of his county would be promoted thereby, hold annually a teachers' institute at such time as may be agreed upon between him and the territorial superintendent, and such institute shall continue in session not less than two days

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nor more than five days. He shall give at least ten days notice of the time and place of holding such institute by publication in some newspaper published in the county, if there be one, if not, by one written notice to each qualified teacher in the county.

SEC. 2. It shall be the duty of all teachers engaged in the county, and of all persons holding certificates, to attend such institute and participate in the exercises thereof, and all teachers who may have charge of schools at the time of holding the annual institute shall adjourn their schools for the time during which the institute shall be held.

Duty of teacher to attend institute

SEC. 3. All teachers who may adjourn school for the purpose of attending any annual institute shall be allowed the same pay while in actual attendance as when teaching, and the county superintendent shall certify to the number of days attendance of each teacher, and the trustees of the several districts shall count them as so many days lawfully employed.

Teacher's pay to continue while attending institute.

SEC. 4. The county superintendent of common schools shall provide a building, fuel, lights, stationery, janitor's services, and all things necessary for holding the institute, and shall present an itemized account of such expenses, not to exceed twenty-five dollars, to the board of county commissioners, and it shall be paid from the school fund of the county.

Superintendent to provide building, fuel, lights, &c., for institute.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 16th, 1877.

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TERRITORIAL CONVICTS.

AN ACT to create a good time law for the convicts of the territorial penitentiary.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That every convict who is now or who may hereafter be confined in the territorial penitentiary, and who shall have no infraction of the rules and regulations of the penitentiary or laws of the territory recorded against him, and who performs in a faithful manner the duties assigned to him, in an orderly and peaceable manner, shall be entitled to the diminution of time from his sentence as appears in the following table, for the respective years of his sentence, and *pro rata* for any part of a year when the sentence is for more or less than a year:

NO. OF YEARS OF SENTENCE.	GOOD TIME GRANTED.	TOTAL GOOD TIME MADE.	TIME TO BE SERVED IF FULL TIME IS MADE.
1st year.....	1 month ...	1 month	11 months.....
2d year.....	2 months...	3 months.....	1 year and 9 months....
3d year.....	3 months...	6 months.....	2 years and 6 months...
4th year.....	4 months...	10 months.....	3 years and 2 months...
5th year.....	5 months...	1 year and 3 months.....	3 years and 9 months...
6th year.....	6 months ..	1 year and 9 months....	4 years and 3 months...
7th year	6 months...	2 years and 3 months...	4 years and 9 months...
8th year.....	6 months...	2 years and 9 months...	5 years and 3 months...
9th year.....	6 months...	3 years and 3 months...	5 years and 9 months...
10th year....	6 months...	3 years and 9 months...	6 years and 3 months...
11th year.....	6 months...	4 years and 3 months...	6 years and 9 months...
12th year....	6 months...	4 years and 9 months...	7 years and 3 months...
13th year	6 months...	5 years and 3 months...	7 years and 9 months...
14th year.....	6 months...	5 years and 9 months...	8 years and 3 months...
15th year.....	6 months...	6 years and 3 months...	8 years and 9 months...
16th year.....	6 months...	6 years and 9 months...	9 years and 3 months...
17th year.....	6 months...	7 years and 3 months...	9 years and 9 months...
18th year.....	6 months...	7 years and 9 months...	10 years and 3 months...
19th year.....	6 months...	8 years and 3 months...	10 years and 9 months...
20th year.....	6 months...	8 years and 9 months...	11 years and 3 months...
21st year.....	6 months...	9 years and 3 months...	11 years and 9 months...
22d year.....	6 months...	9 years and 9 months...	12 years and 3 months...
23d year.....	6 months...	10 years and 3 months...	12 years and 9 months...
24th year.....	6 months...	10 years and 9 months...	13 years and 3 months...
25th year.....	6 months...	11 years and 3 months...	13 years and 9 months...

SEC. 2. In case any convict shall be guilty of the violation of any of the rules or laws of the penitentiary, or of the territory, as above provided, and has become entitled to any diminution of his sentence by the provisions aforesaid, he shall, for the first offense, forfeit, if he has made so much, two (2) days; for the second offense, four (4)

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days; for the third offense, eight (8) days; and for the fourth offense, sixteen (16) days, and, in addition thereto, whatever number of days more than one that he is in punishment shall also be forfeited. For more than four offenses the warden shall have the power to deprive him, at his discretion, of any portion or all of the good time that the convict may have earned, but not less than as provided for the fourth offense.

SEC. 3. That whenever any convict is or has been committed under several convictions, with separate sentences, they shall be construed as one continuous sentence under this law in the granting or forfeiting of good time.

SEC. 4. The warden, in computing the diminution of time for those convicts now in the penitentiary, shall allow them the "good time granted," but not the "good time made," for the year or part of a year of their unexpired sentence, the same as if this law had been in effect at the commencement of their sentence.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 16th, 1877.

TERRITORIAL CONVICTS.

AN ACT to authorize the governor to contract for the keeping and maintaining of the territorial convicts, in the United States penitentiary at Deer Lodge.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the governor of the territory is hereby authorized and directed to enter into, make, and execute, on behalf of, and in the name of, the territory, upon such terms as he shall think best, a contract with the authorities of the United States for the keeping, clothing, and maintenance, in the United States penitentiary at Deer Lodge, for a term of years, not to extend beyond August 1st, 1879, of all persons sentenced to confinement in the territorial penitentiary, for offences against the laws of the territory; *Provided*, that the amount contracted to be paid by the territory shall not exceed the sum of one dollar, United States currency, per day, for keeping, clothing and maintaining each convict.

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SEC. 2. Whenever by the terms of such contract payments are to be made by the territory, the warden, or officer of the United States, in charge of the penitentiary, shall make out and deliver to the governor an account of the money due from the territory, specifying the name of each territorial prisoner, and the length of time the territory is charged for such prisoner, and shall certify that such amount is correct, and that the prisoners charged for have been kept in the penitentiary during all the time charged for them, respectively; which account shall be examined by the governor, and if he be satisfied that the same is correct he shall so certify, and upon presentation to, and filing with, the territorial auditor of such account and certificate, the said auditor is hereby authorized and directed to draw his warrant, to the person authorized by the contract to receive payment for the amount due on said account, on the territorial treasury, payable out of any money in the territorial treasury not otherwise appropriated by law, and such warrant shall be paid as other warrants drawn on the treasury.

SEC. 3. The governor is hereby authorized to make such contract as he shall think advantageous to the territory, for the hire or labor of the territorial convicts, for the period of not exceeding two years, or to apply the labor of such prisoners in payment of the amount due the United States for the keeping, clothing, and maintenance of such prisoners.

SEC. 4. Whenever any territorial convict shall be discharged from imprisonment, and shall be destitute of proper and sufficient clothing, and of means to procure the same, the governor is hereby authorized and directed to provide proper and sufficient clothing for such prisoner, upon the certificate of the warden, or other officer in charge of the penitentiary, that the same is necessary: *Provided*, the cost of such clothing furnished any one prisoner shall not exceed fifteen dollars, and he shall also pay the additional sum of five dollars in money; and upon the filing by the governor, in the office of the territorial auditor, of the certificate of such warden or other officer in charge, and of the governor, that such clothing was necessary and has been furnished, the said auditor is authorized and directed to draw his warrant on the territorial treasury for the amount so expended for clothing in favor of the governor, payable out of any money in the treasury not otherwise appropriated.

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SEC. 5. All persons sentenced to imprisonment in the penitentiary under the laws of this territory, shall be confined in the United States penitentiary, at Deer Lodge City, in pursuance of the contract to be made as above provided.

SEC. 6. That the territorial auditor is hereby required to issue territorial warrants for such amounts as may be necessary to pay for such maintenance, clothing, and keeping of such convicts, in United States currency, and the governor and auditor are authorized and required to sell the same at the highest price that can be obtained therefor in United States currency, and apply the proceeds of such sale to the payment of all sums due, or that may become due the United States under the provisions of this act: *Provided*, That the territorial auditor shall post a notice conspicuously in his office for twenty days previous to selling such warrants, stating about the amount of United States currency he will require at a given time, and requesting bids for the same, and he shall give notice of such sale to each banker in the territory, by addressing and mailing him a postal card at least ten days before the sale.

SEC. 7. Whenever the word "maintenance" occurs in the preceding sections of this act, it is understood to mean support in sickness as well as health, including all necessary medical attendance and care.

SEC. 8. That the act to regulate and govern the penitentiary at Deer Lodge City, Montana territory, approved May 6th 1873, and all amendments heretofore made to said act, be and the same are hereby repealed.

Approved February 15th, 1877.

TERRITORIAL TREASURER.

AN ACT relating to the duties of the territorial treasurer.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the territorial treasurer is authorized, and it is hereby made his duty, to transfer any and all surplus moneys which are now or which may accumulate in the sinking fund prior to January 1st, 1878, to the general fund, and apply the same to the

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payment of outstanding territorial warrants and the interest due upon the same.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 16th, 1877.

TREASURERS—TERRITORIAL AND COUNTY.

AN ACT to protect the treasuries of the counties and of the territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. It shall be the duty of the county commissioners of the several counties of this territory, at any of their regular meetings, or at such other times as they may select, and not less than twice in each year, to examine the books of the treasurers of their respective counties, and to count the moneys in their possession as such treasurers; and for this purpose it is hereby made the duty of such treasurers in the several counties, whenever thereto requested by the said county commissioners of their counties, or any two of them, to deliver forthwith to said county commissioners said books, and all of them, and to permit an inspection and count of the funds in their hands, and all of them; and if the said books and moneys shall be found by them to be correct, they shall certify the same over their signatures, and the county clerk shall enter the same in the records of the proceedings of the board of county commissioners.

Commissioners to examine books of county treasurer.

SEC. 2. The governor shall have power, and it is hereby made his duty, to examine the books of the territorial treasurer as often as twice in each year, and at such times as he may select, and to count the funds in the hands of such treasurer; and he shall also examine the books of the territorial auditor; and he shall make a report of the result of such examination in writing, and file the same with the secretary of the territory.

Governor to examine books of territorial treasurer and auditor, and count funds, and make report.

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Secretary of territory to file and preserve report.

SEC. 3. It shall be the duty of the secretary of the territory to file and preserve the reports of the governor herein provided for.

Duty of the governor in case the treasurer has been guilty of neglect or malfeasance.

SEC. 4. If, at any time, upon the examination of the territorial treasury, it shall appear to the governor that the books of the territorial treasurer do not correspond with the amount of funds on hand, or that the said books do not show the actual condition of said office and the funds on hand; or if it shall appear to him that any funds of the territory have been embezzled or diverted from their proper channel, or in any way or manner expended or taken from the treasury without authority of law; or that there is or has been any culpable negligence by said treasurer in the keeping of said books, or the care or keeping of said public moneys, he is hereby empowered, and it is hereby made his duty, forthwith to take possession of the books, moneys, papers, and other property, of every kind and description, belonging to the territory, or which came to the treasurer's possession by virtue of his said office, and to remove the said treasurer and appoint another in his place, who shall give bonds to the approval of the said governor, and take the oath prescribed by law; which oath shall be taken before some justice of the supreme court, or, in the absence of the said justice, before a probate judge, which oath and bond shall be filed with, and recorded by, the secretary of the territory, and thereupon the governor shall turn over to such treasurer the books, moneys, papers, and other property, and take his receipt therefor; and the governor shall make report of his said doings to the succeeding legislative assembly, and the said treasurer shall hold his office until the close of the next legislative assembly.

Appointment and qualification of another treasurer.

Duty of county commissioners in case county treasurer is guilty of malfeasance.

SEC. 5. If, at any time, upon the examination of the county treasuries herein provided for, it shall appear to the county commissioners that the books of the county treasurers do not correspond with the amount of funds on hand, or that the said books do not show the actual

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condition of said office and the funds on hand; or if it shall appear to them that any funds of the county have been embezzled or diverted from their proper channel, or in any way or manner expended or taken from the treasury without authority of law; or that there is or has been any culpable negligence by said treasurer in the keeping of said books, or the care or keeping of the said public moneys, they are hereby empowered, and it is hereby made their duty to forthwith take possession of the books, moneys, and papers and other property of every kind and description belonging to the county, or which came to the possession of said treasurer by virtue of his said office, and appoint another in his place, who shall give bonds to the approval of said county commissioners, and take the oath prescribed by law, which oath shall be taken before an officer authorized by law to administer oaths; which oath and bond shall be filed with the clerk of the board of county commissioners, and thereupon the commissioners shall turn over to such treasurer the books, moneys, papers, and other property and take his receipt therefor, and the said treasurer shall hold his office until his successor shall be elected and qualified.

Appointment and qualification of another treasurer.

SEC. 6. That each county treasurer shall, at the expiration of each and every quarter, make a settlement with the board of county commissioners of their respective counties, and shall make a quarterly report of all moneys collected for county and territorial purposes, and shall forthwith transmit such report, together with the amount due the territory, to the territorial treasurer.

County treasurer to make quarterly settlement and report.

SEC. 7. The chairman of the board of county commissioners shall make, or cause to be made by the clerk of the board, a certified statement of each and every quarterly, annual, or final settlement had with said county treasurer, showing the amount collected by said treasurer for territorial purposes; and before the board shall adjourn they shall cause said certified statement to be transmitted to the territorial auditor.

Statement of each settlement to be made by chairman of board.

Same transmitted to auditor.

SEC. 8. If any territorial or county treasurer shall re

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fuse to comply with the demand of the officer or officers hereby empowered to examine their books, moneys, and papers, for shall wilfully seek or endeavor for any period of time whatever to delay such delivery or examination, or shall refuse to comply with the demand of the governor herein provided for, or the demand of the county commissioners herein provided for, to deliver up any books, moneys, papers, or other property belonging to their respective offices, upon receiving notice of their removal, he shall be deemed guilty of a felony, and, being thereof convicted, shall be punished by imprisonment in the territorial prison for a period not less than six months nor exceeding five years.

Penalty if treasurer hinder or delay examination of his books or refuse to deliver up books, moneys, &c.

SEC. 9. That for the purpose of more fully making such examination, such commissioners shall cause said treasurer to make oath before some person authorized to administer oaths, that the money he represents to said commissioners, belongs to the county, and shall also cause a similar oath to be administered to the person or managers of corporations with whom such moneys may be deposited.

Oath administered to treasurer.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved February 15th, 1877.

WARRANTS—COUNTY.

AN ACT to repeal section 1 of an act entitled "An Act concerning county warrants, and for other purposes."

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That section 1 of an act entitled "An Act concerning county warrants and for other purposes," approved January 11th, 1872, be and the same is hereby repealed.

Approved February 9th, 1877.

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WATER RIGHTS.

AN ACT to regulate the sale of water and encourage the pursuits of industry.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That any person or persons, company or corporation, having the right to use, sell, or dispose of water, and engaged in using, selling, or disposing of the same, who shall have a surplus of water not used, or sold, or any person or persons, corporation or company, having a surplus of water and the right to sell and dispose of the same, shall, and they or it are hereby required, upon the payment or tender to the person or persons entitled thereto, an amount equal to the usual and customary rates per inch, to convey and deliver to the person or persons, company or corporation, such surplus of unsold water, or so much thereof for which said payment or tender shall have been made, and shall continue so to convey and deliver the same weekly so long as said surplus of unused or unsold water shall exist and said payment or tender made as aforesaid.

Regulation as to sale of surplus water.

SEC. 2. That any person or persons, corporation or company, desiring to avail themselves of the provisions of this act, shall, at their own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by it or them, and shall pay or tender to the person or persons, corporation or company having to the right to the use, sale, or disposal thereof, an amount equal to the necessary costs and expense of tapping any gulch, stream, reservoir, ditch, flume, or aqueduct, and putting in gates, gauges, or other proper and necessary appliances usual and customary in such cases, and until the same shall be so done the delivery of the said surplus water shall not be required as provided by section 1 of this act.

Manner in which persons may avail themselves of the provisions of this act.

SEC. 3. That any person or persons, corporation or company, constructing the necessary ditches, aqueducts,

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or flumes, and making the payments or tenders herein before provided, shall be entitled to the use of so much of the said surplus water as said ditches, flumes, or aqueducts shall have the capacity to carry and for which payment or tender shall have been made as aforesaid, with all the rights and privileges incidental thereto so long as said unsold or surplus water exists and said payment or tender shall be or have been made, and may institute and maintain any appropriate action at law or in equity for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

Rights and privileges of persons complying with this act.

SEC. 4. That nothing in this act shall be so construed as to give the person or persons, corporation or company, acquiring the right to the use of water as hereinbefore provided, the right to sell or dispose of the same after being so used by it or them, or prevent the original owner or proprietor from re-taking, selling, and disposing of the same in the usual and customary manner, after it is so used as aforesaid.

Persons using waters under this act not to have right to sell same after being used.

SEC. 5. This act to take effect and be in force from and after its passage.

Approved February 16th, 1877.

WOOLEN MANUFACTORIES.

AN ACT to encourage the manufacture of woolen fabrics in the territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. The first woolen factory that shall be erected and operated in the territory of Montana of proper construction and sufficient capacity for the production of flannels and blankets, shall be exempt from all taxation for the term of six years from the date of the completion of such factory; the said factory shall be deemed completed at the time of manufacturing the first fabric.

Exemption from taxation of first woolen factory erected in this territory.

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Term "woolen factory" defined.

SEC. 2. The term "woolen factories," used in this act, is hereby defined to include and embrace the building or buildings and lands connected therewith, together with all machinery used in or about the same, or in any wise necessarily connected therewith, and all water rights, ditches, flumes, reservoirs, and all stock on hand unsold, whether the same be raw or manufactured.

Notice of intention to erect woolen factory.

SEC. 3. That any person or corporation filing with the auditor of the territory the first notice of his or their intentions to erect and operate a woolen factory within two years from the date of filing said notice, shall have the term of six months from the time of filing the notice aforesaid to complete arrangements and obtain the necessary machinery for the erection of said factory; and at or before the expiration of the said six months said person or corporation shall commence the erection of said factory and shall prosecute the work thereupon with due diligence until the same shall be completed.

Preference given to person first filing notice and complying with this act.

SEC. 4. Any person or corporation that shall first file the notice provided for in section 3 of this act, and shall proceed to erect and complete said factory in manner provided therein, this act shall have the effect to give preference to such person or corporation under this act for the term of six months after the date of filing the aforesaid notice.

SEC. 5. All acts and parts of acts in conflict herewith be and the same are hereby repealed.

Approved February 14th, 1877.

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SPECIAL LAWS.

AN ACT to pay for the support and maintenance of the insane.

Be in enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. There shall be and is hereby appropriated out of the territorial treasury the sum of fifteen hundred and forty-three dollars and fifty cents, to be paid to Sister Josephine, superioress of St. John's Hospital, Helena, Montana territory, for the support, care, and maintenance of certain insane persons as appears by the account rendered and approved by the governor to the thirty-first day of January, 1877; and the territorial auditor is hereby authorized and directed to draw his warrant on the territorial treasurer for the above amount, in favor of said person, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 2. This act to take effect and be in force from and after its passage.

[NOTE FROM THE SECRETARY.—The foregoing act having been presented to the governor of the territory on the twenty-ninth day of January, 1877, for his approval, and not having been returned by him to the house of the legislative assembly in which originated, within the time prescribed by the organic act of the territory, has become a law without his approval.]

AN ACT to provide for the relief of the finances of Beaverhead county.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the county commissioners of Beaverhead county, in this territory, shall have, in addition to the powers already conferred upon them by law, authority to call in at any time when they shall deem it expedient for the interest of said county, all outstanding orders or warrants against the treasury of said county, payable out of the general fund thereof, and to issue coupon bonds in lieu thereof.

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SEC. 2. All bonds that may hereafter be issued under the provisions of this act, shall draw interest from the date of issuance thereof, at a rate not exceeding ten per cent per annum, said interest to be due and payable on the first day of January of each year, by the treasurer of said county, out of any moneys in his hands, at the office of said treasurer, or in the city of New York, as the holder of said bonds may elect.

SEC. 3. The coupon bonds authorized by this act shall be in such form as the county commissioners may direct, and shall bear the signature of the said county commissioners and shall be sealed and countersigned by the county clerk. The coupon shall be attached to said bonds, and shall be also in the form aforesaid, and each coupon shall bear the signature of the chairman of said county commissioners, countersigned by said clerk.

SEC. 4. Each bond issued under the provisions of this act shall be registered by the county treasurer of said county, in a book to be provided for him by said county for that purpose, in which shall be entered the number, date, and amount of each bond, and the name of the person to whom the same was issued. All warrants called in by said commissioners, and in lieu of which such bonds shall have been issued, shall be cancelled by said commissioners in the same manner that county warrants are now cancelled under the general laws of the territory, and the said commissioners shall preserve in a book to be kept by the clerk for that purpose, a correct description of each warrant called in, showing the date and amount and number of each warrant, to whom the same was issued, and the amount of interest due thereon at the date of such cancellations.

SEC. 5. All bonds issued under the provisions of this act shall be of the denominations of one hundred dollars and five hundred dollars; and if any amount of such orders or warrants presented by any person for funding shall be of a sum less than one hundred dollars, the holder of such warrants shall make up the amount in money so as to equal the amount of the face of the bond to be issued, and any money paid for that purpose shall be paid to the county treasurer, to the credit of the general fund.

SEC. 6. All bonds issued under the provisions of this act shall become due and payable ten years from the date of their issue, but

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shall be redeemable at the pleasure of said county at any time after the expiration of five years from such date.

SEC. 7. The faith of said Beaverhead county is solemly pledged for the payment of the interest and redemption of the principal of said bonds.

SEC. 8. For the purpose of carrying into effect the provisions of this act, the said commissioners are hereby authorized to have printed or lithographed at the lowest possible rates, suitable bonds, with coupons attached, and pay therefor out of any moneys in the treasury of said county, not otherwise appropriated.

SEC. 9. All holders of county warrants on the general fund of said county shall present the same to the board of commissioners of said county, or file the same with the county clerk thereof, on or before the first day of May, A. D. 1877, for conversion into bonds under the provisions hereof; and in case any such holder shall fail to present his warrants to the said commissioners, or file the same with the said clerk, on before said day, it shall be lawful for the said commissioners, in their discretion, to issue and dispose of in the manner hereinafter provided, a sufficiency of said bonds to pay off said warrants, and shall out of the proceeds of such sale of bonds, cause the said warrants to be redeemed in the manner now provided under the general laws of the territory, for the redemption of county warrants.

SEC. 10. The county commissioners of said county shall cause to be advertised in a newspaper having a general circulation in said county (the designated newspaper of said county, if there be one), four four weeks, that they will sell at public auction to the highest bidder, the bonds authorized by section 9 of this act to be sold, stating in such notice the time and place of such sale and the amount and denomination of the bonds to be sold: *Provided*, That no bonds disposed of under the provisions of this act shall be sold at less than the face thereof.

SEC. 11. At any time after the warrants of said county shall have been converted into bonds under the provisions of this act, and there shall have accumulated in the treasury of said county funds not appropriated by law, and not needed to meet the current expenses of said county, any sum of money exceeding one hundred dollars, it shall be lawful for the treasurer of the county to pur-

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chase the bonds of said county, to the extent of such accumulated funds, by order and under the direction of said commissioners, and said treasurer shall report thereon to said commissioners, at his next settlement, and said commissioners shall then cancel said bonds as provided by law.

SEC. 12. The treasurer of said county shall pay the interest as it falls due on the bonds herein authorized, on the presentation to him of the proper coupons therefor, and all bonds and coupons which may be paid by him shall be returned by him to said commissioners at his next settlement with them, and the said commissioners shall cancel such bonds and coupons in the manner now provided by law for the cancellation of county warrants.

SEC. 13. That if any person or persons shall falsely make, forge, counterfeit, or alter, or cause to be made, forged, counterfeited, or altered, or shall wilfully aid or assist in making, forging, counterfeiting, or altering any bond or coupon authorized to be issued under the provisions of this act, or shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall have or keep in possession, or conceal, with intent to utter, publish, or sell, any such forged, counterfeit, or altered bond or coupon with intent to defraud any person or persons, body corporate or politic, every such person so offending shall be deemed guilty of a felony, and shall, upon conviction thereof, be punished by fine not exceeding ten thousand dollars, and by imprisonment in the penitentiary not exceeding fifteen years, in the diserction of the court.

SEC. 14. This act shall take effect and be in force from and after its passage.

Approved February 16th, 1877.

AN ACT to enable the people of Bozeman to erect a school house.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the trustees of school district No. 7, in Gallatin county, Montana territory, are hereby authorized and empowered to issue on the credit of said school district, coupon bonds to an amount not to exceed the sum of fifteen thousand dollars, or so much thereof as may be necessary to enable the trustees of said

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school district to purchase and enclose suitable grounds, erect thereon ample and sufficient buildings for school purposes, furnish and equip the same, which bonds shall be redeemable at the pleasure of the trustees of said school district, and shall become due and payable ten years from their date, and bear interest at a rate not exceeding ten per cent per annum, interest payable semi-annually.

SEC. 2. The bonds authorized to be issued by this act shall be in such form as the school trustees may direct, and shall bear the signature of the chairman of the board of school trustees, and shall be sealed and countersigned by the clerk of said school district, and the coupons attached to the bonds shall be signed by the chairman of the board of school trustees, and the clerk of said school district, and each bond issued shall be registered by the county treasurer, in a book provided for that purpose, and it shall show the number and amount of each bond, and to whom issued, and the said bonds shall be sold by the said school trustees or their lawfully authorized agents, at not less than ninety cents on the dollar of the face thereof, as hereinafter provided.

SEC. 3. The school trustees shall, as soon as practicable after the passage of this act, give notice, by advertisement in some newspaper published in this territory, for a period of not more than four weeks, to the effect that the said school trustees will sell said bonds (briefly describing the same), and stating the time when, and place where, such sale shall take place: *Provided*, That the school trustees are authorized to reject any and all bids, and to sell said coupon bonds at private sale, if they believe it for the best interest of the district, and all moneys arising from the sale of said bonds shall be paid forthwith into the treasury of Gallatin county, to the credit of said school district, and shall be immediately available for carrying out the provisions of this act, and the treasurer shall not be entitled to any compensation for paying out said money.

SEC. 4. All bonds authorized to be issued by this act shall be of the denominations of one hundred and five hundred dollars, and the faith of said school district is hereby solemnly pledged for the payment of the interest and the redemption of the principal of said bonds.

SEC. 5. The school trustees shall ascertain and levy annually the tax requisite to pay the installments of interest as they become

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due, and a sinking fund to meet the bonds at their maturity, and said tax shall become a lien upon the property in said school district, and be collected in the same manner and under the same laws that other taxes are collected.

SEC. 6. Whenever, at any time, the sum in said sinking fund shall equal or exceed the sum of one hundred dollars, and from time to time thereafter, when it may so occur, the county treasurer shall post in his office, that he will in thirty days from the date of such notice, redeem said amount of bonds which may then be payable, giving the numbers thereof, preference being given to the oldest issue, and, if at the expiration of said thirty days, the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease, but the treasurer shall at all times thereafter be ready to redeem the same on presentation; and whenever any bonds shall be so purchased or redeemed, the county treasurer shall cancel all bonds so purchased and redeemed by writing across the face of such bond or bonds, in red ink, the word "redeemed," and the date of such redemption.

SEC. 7. The treasurer of the county shall pay in lawful money of the United States, out of any moneys belonging to the said school district, at the expiration of six months from the date of the issue of each bond, the interest due thereon, and semi-annually thereafter, upon presentation at his office of the proper coupon, which shall show the amount due, and the number of the bond to which it belonged; and all coupons so paid shall be reported to the school trustees at their first meeting thereafter.

SEC. 8. For the purpose of carrying into effect the provisions of this act, the said school trustees are hereby authorized to cause to be printed or lithographed, at the lowest possible rates, suitable bonds with coupons attached, and pay for the same out of any moneys in the county treasury to the credit of said school district.

SEC. 9. That if the school trustees, or any of them, shall fail or refuse to pay into the county treasury the money arising from the sale of the bonds provided for, they shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment in the penitentiary not exceeding the term of ten years, in the discretion of the court.

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SEC. 10. This act shall be submitted to the qualified voters of the said school district, on Saturday, the 17th day of February, 1877, at the school house in said district, by direction of the school trustees, and if a majority of the votes so cast at the election shall be in favor of this act, then this act to be in full force and effect; but if a majority of the votes so cast shall be against this act, then this act shall remain suspended, unless thereafter enforced, as hereinafter set forth.

SEC. 11. In case of the rejection of this act by a majority of the voters at the first election, at any time or times thereafter, when twenty of the qualified voters of said district shall petition the school trustees of said district for a re-submission of this act to the voters of said district, then it shall be the duty of said trustees to again submit the adoption or rejection of this act to a vote of the qualified voters of said district, and, if upon said second submission a majority shall be in favor of this act, then the same shall be in full force and effect from the time of its adoption. Said re-submissions shall be conducted in the manner prescribed by the school trustees; and whenever the trustees, or a majority of them, shall be of the opinion that this act is desirable, they may re-submit said act as many times as in their judgment shall be proper, for adoption or rejection, in the manner by them prescribed.

SEC. 12. This act to take effect and be in force from and after its passage.

Approved February 5th, 1877.

AN ACT legalizing the action of the county commissioners of Gallatin county.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the levy of taxes for the year 1877, by the board of county commissioners of Gallatin county, Montana territory, is hereby declared to be as valid, to all intents and purposes whatsoever, as if the said levy of taxes had been made on the day prescribed by law.

SEC. 2. This act shall be in force and take effect from and after its passage.

Approved February 16th, 1877.

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AN ACT defining the powers and duties of the board of county commissioners of Gallatin county in certain cases.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the board of county commissioners of the county of Gallatin are hereby authorized and empowered to create, enlarge, extend or establish, or alter, widen, abolish, grade or otherwise improve any street, avenue, or alley, in any city, town, or village in said county, which shall have been, or may hereafter be pre-empted, platted, and surveyed, in accordance with the acts of congress and laws of this territory.

SEC. 2. That whenever any street, avenue, or alley, heretofore or hereafter lawfully created, altered, extended, or established, shall be obstructed or blocked by any person or persons, corporation or corporations, it shall be the duty of said board of county commissioners, upon the presentation of a petition, signed by at least twenty householders and *bona fide* residents of any such city, town, or village, requesting the removal and abatement thereof, to issue an order directed to the person or persons, corporation or corporations, obstructing or blocking such street, avenue, or alley, requiring and commanding them or it to remove or abate the same; which said order shall be served upon the person or persons, corporation or corporations, by the sheriff of said county, by delivering a copy thereof to him or them, or to the president, secretary, or cashier, or person having charge of such corporations or corporation.

SEC. 3. That if any person or persons, corporation or corporations, fail, neglect, or refuse to remove or abate such obstruction within thirty days after the service of the copy of the order, as provided in the preceding section, or on or before the next regular session of said board thereafter, then in that case it shall be lawful for, and said board, at such regular session, is hereby authorized and directed to issue its order to the sheriff of said county, commanding him to abate and remove such obstruction, which said order shall be duly executed and returned by said sheriff, with his proceeding thereon endorsed, and the same shall be filed and preserved among the records of said board.

SEC. 4. That all costs and expenses incurred in serving said order, and in removing and abating such obstruction shall be paid to said sheriff by the person or persons, corporation or corporations

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failing, neglecting, or refusing to comply with the mandate of said order, and upon a failure to so pay the same upon demand, the said sheriff is authorized to collect the same, with costs, in an ordinary action of debt, before any court of competent jurisdiction, and the person or persons, corporation or corporations, so neglecting, failing, or refusing to abate or remove said obstructions, shall not receive any compensation for any damages or injuries necessarily incurred in removing or abating the same.

SEC. 5. That whenever, in the opinion of said board, it shall be necessary to take private property for public use in creating, establishing, widening, extending, or opening any street, avenue, or alley, in any such city, town, or village, the property holders of said city, town, or village shall be required to make just compensation therefor; and when the owners thereof and the said board of county commissioners cannot or do not agree upon the amount of such compensation, said board shall appoint three disinterested free-holders of said city, town, or village, who shall each take an oath before the clerk of the said board, or some one authorized to administer oaths in said county, for the faithful and impartial discharge of their duty, to view and inspect the said property so proposed to be taken, and to assess and determine the value thereof, and damages occasioned thereby, and shall, within twenty days after service of notice of their appointment as such commissioners, proceed so to view, examine, assess, and determine the value of said property and damages aforesaid, and report the same to said board; and if said board shall be of opinion that the benefit and advantages to the public shall be equivalent to the amount of compensation or damages so assessed, it shall cause the said street, avenue, or alley to be opened, widened, extended, or established; and, in assessing such damages, the jury shall take into consideration any benefit which such improvements will result into the balance of any claimant's property situate on or near the street, avenue, or alley so opened, widened, or extended: *Provided*, That in all cases either party may appeal to the district court from any inquest or award made as aforesaid; but such appeal shall not in any manner delay the opening, widening, or extending, or establishing any street, avenue, or alley, or condemning any property as aforesaid, but the adequacy of damages alone shall be considered.

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SEC. 6. That in case any building erected prior to the survey of any town site, or addition thereto, is found by such survey to stand partly on any street, avenue, or alley, but does not affect the free use of such street, avenue, or alley materially, then it shall be wholly in the discretion of the board of county commissioners to have the same removed or not, under the provisions of this act.

SEC. 7. That the provisions of this act shall apply to any and all additions to any such city, town, or village in said county where the same have been surveyed and a plat thereof filed in the office of the recorder of deeds of said county.

SEC. 8. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 9. This act to take effect and be in force from and after its passage.

Approved February 8th, 1877.

AN ACT to amend an act entitled "An Act to provide for the redemption of the funded debt of Lewis and Clarke county," approved February 5th, 1876.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That section 1 of an act entitled "An Act to provide for the redemption of the funded debt of Lewis and Clarke county," approved February 5th, 1876, be, and the same is hereby amended, so as to read as follows: "SECTION 1. That the commissioners of Lewis and Clarke county are hereby authorized and empowered to issue, on the credit of said county, coupon bonds to an amount sufficient to enable them to redeem all outstanding bonds of said county falling due in the year A. D. 1876, and A. D. 1877, which said bonds shall be redeemable at the pleasure of said county after three years from their date, and shall become due and payable seven years from their date."

SEC. 2. That section 4 of said act be amended so as to read as follows: "SECTION 4. The commissioners of Lewis and Clarke county are hereby authorized and required, and it is hereby made their duty, to sell, in manners hereafter provided, a sufficient amount of ten per cent bonds of Lewis and Clarke county, to enable them

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to redeem all of the fifteen per cent bonds, and also all of the twelve per cent bonds, of Lewis and Clarke county now outstanding. That at any time the county commissioners may select, they shall give notice by advertisement in one or more daily newspapers published in said county of Lewis and Clarke, and in one or more weekly newspapers published in the city of New York, in the state of New York, for a period of not less than thirty days prior to the time said bonds are to be sold; such advertisement shall be for sealed proposals, which proposal shall state amount of such bonds wanted, and the price offered for the same. The county commissioners receiving such proposals shall open such proposals so received, and the party or parties offering the highest price shall receive the amount of such ten per cent bonds as such party or parties may want: *Provided*, That no bonds shall be sold for any less price than ninety-six per cent of the face value thereof."

SEC. 3. That section 6 of the said act be and the same is hereby amended so as to read as follows: "SECTION 6. The proceeds of the sale of such bonds shall be paid into the county treasury of said county, and shall be applied in payment, first, to the fifteen per cent bonds, and second, to pay the twelve per cent bonds."

SEC. 4. That all acts and parts of acts in conflict herewith be and the same are hereby repealed.

Approved February 16th, 1877.

AN ACT in relation to the collection and disbursement of the revenue of Missoula county, and for other purposes.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. The county commissioners of the county of Missoula, at their regular meeting on the first Monday of March, 1877, and annually thereafter, upon the basis of the report of the receipts and expenditures and statement of the financial condition of said county for the preceding fiscal year, shall levy taxes upon the assessable property of said county for the ensuing fiscal year, in the manner hereinafter provided. The levy for taxes in said county made by the county commissioners thereof at a former meeting of the said county commissioners for the assessment and collection of taxes for

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the year 1877, is hereby set aside, and the county commissioners of said county are hereby directed to levy taxes for the fiscal year commencing March 1st, 1877, in accordance with the provisions of this act. The board of county commissioners of said county are hereby authorized to sit for a period not exceeding eight days at said meetings in March in each year, instead of eight days now allowed by law for the sessions of the county commissioners of the several counties of the territory, at their December terms. There shall be levied annually by the board of county commissioners of Missoula county, and collected by the county treasurer of said county, an *ad valorem* tax on each dollar of assessed valuation on all property in said county, for county purposes, not exceeding ten mills in addition to the amounts now authorized to be levied and collected under the provisions of section 1 of Chapter LXXXV. of an act entitled "An Act providing for the collection of revenues," approved January 12th, 1872; in addition also to the sum of one mill upon each dollar of assessed valuation of property in said county, authorized to be levied and collected under the provisions of section 19 of an act entitled "An Act in relations to roads and highways," approved February 12th, 1874; and in addition also the sum of five mills on each dollar of assessed valuation of property in said county authorized to be levied and collected under the provisions of an act entitled "An Act to amend an act entitled an act authorizing the county commissioners of Missoula county to levy a special tax for the purpose of building, buying, and repairing bridges," approved January 24th, 1874.

SEC. 2. The county commissioners of Missoula county shall, at the time of such levy, make an estimate of the current expenses of said county for the ensuing fiscal year, upon the basis of the expenditures of said county for the preceding fiscal year, and shall levy a tax of a sufficient number of mills on each dollar to meet such current expenses, upon a basis of the entire amount of assessable property of said county for the preceding year. And in case there shall be any deficiency in the revenue provided by this section, to meet the current expenses of said county for any fiscal year, such deficiency shall be carried into the estimate for the current expenses of the succeeding fiscal year, and provided for in the tax levy for current expenses for such succeeding fiscal year. The county commission-

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ers of said county shall also, at the time of such levy, make an estimate of the interest to accrue on the bonded indebtedness of said county during the ensuing fiscal year, and shall make a levy of a sufficient number of mills to meet such interest upon a like basis to that herein provided for the estimates for the current expenses of said county.

SEC. 3. The county commissioners of Missoula county are hereby authorized to issue bonds in accordance with the provisions of an act entitled "An Act to provide for the funded debt of Missoula county, and to provide for the payment of interest on the bonds of said county," approved January 24th, 1876, to an amount sufficient for the redemption of interest coupons which may have fallen due on the funded indebtedness of Missoula county, prior to March 1st, 1877, and for the redemption of the matured funded indebtedness of said county, and such of the funded indebtedness of said county as may have become redeemable, at the option of Missoula county, and for no larger amount.

SEC. 4. The county commissioners of Missoula county are required to levy taxes annually as follows: For current expenses, not exceeding six mills, to constitute a current expense fund; for interest on bonds, not exceeding five mills, to constitute a sinking fund for the payment of interest and bonds; for the payment of the floating debt, not exceeding two mills, to constitute a floating debt fund for the redemption of outstanding warrants of said county upon the general fund of said county; for the purchase and redemption of the floating debt of said county, not more than six mills, to constitute a redemption fund for the purchase of outstanding warrants of said county; for the payment of interest on bonds which may be exchanged for warrants, not exceeding two mills, provided no levy of this said tax under the last above mentioned provisions shall be made in the year 1877, to constitute a floating bond sinking fund, for the payment of interest on bonds, which may be exchanged for warrants of said county under the provisions of this act; for the redemption of outstanding contingent fund warrants, not exceeding two mills, to constitute a contingent fund for the redemption of the outstanding contingent fund warrants of said county; for the benefit of the poor, not exceeding three mills, to constitute, together with the per capita poor tax on each male inhabitant, a poor fund for the pay-

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ment of warrants outstanding and to be drawn on said fund in the order of their registration and in pursuance of law; for the payment of outstanding road and bridge fund warrants, not to exceed five mills, to constitute a road and bridge fund, for the redemption of outstanding warrants on the road and bridge fund of said county, to the close of the fiscal year ending April 30th, 1880; for the redemption of outstanding warrants on the road fund, one mill, to constitute a fund for the redemption of outstanding warrants on the road fund of said county; for general road purposes, not exceeding two mills, to constitute a fund, along with such sums as may be received for delinquent road tax from the several road districts, to be known as the general road fund for the repair of such portions of the Mullen road as lie between Medicine Tree Hill and the west bank of Big Blackfoot river; for school purposes, not exceeding three mills, to constitute a school fund, to be disbursed in accordance with the laws of the territory; for territorial purposes, four mills.

SEC. 5. The treasurer of said county of Missoula is hereby required to set apart all moneys coming into his hands into the several funds provided for in the foregoing section, in accordance with the levies for taxes which shall be made by the county commissioners of said county, and to the amount of the collections that may be made under each of said levies, and to pay the same out upon warrants drawn upon him in accordance with the specific purposes for which each fund may have been created, and for no other purpose.

SEC. 6. It is hereby made the duty of said treasurer of Missoula county to disburse the moneys in the current expense fund of said county, in the redemption of warrants drawn on him after March 1st, 1877, for the payment of the current expenses of said county, said warrants to be paid in the order of their registration; to disburse the moneys in the sinking fund of said county, first, in the redemption of interest coupons which may become payable after March 1st, 1877, and second, in the redemption of the matured bonds of said county, and third, of the bonds of Missoula county which may have become redeemable, at the option of said county; to disburse the moneys in the floating debt fund in the redemption of outstanding warrants in the order of their registration, upon the general fund; to disburse the moneys in the redemption

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fund in accordance with the provisions of an act as amended by this act, entitled "An Act to provide for the payment of the indebtedness of Missoula county," approved January 24th, 1876; to disburse the moneys in the floating bond sinking fund in the payment of interest coupons on bonds which may have been exchanged for the floating debt of said county; to disburse moneys in the contingent fund, poor fund, road and bridge fund, road fund, and school fund in the manner prescribed by the laws of the territory of Montana; and to disburse moneys in the general road fund in the redemption of warrants drawn for the repairs of that portion of the Mullen road lying between Medicine Tree Hill and the west bank of Big Blackfoot river, and upon no other warrants; and the county commissioners of said county are especially prohibited from allowing warrants against said general road fund to an amount twenty per cent in excess of its estimated revenues for any year.

SEC. 7. An act entitled "An Act authorizing the county commissioners of Missoula county to apply certain funds of said county for a special purpose," approved February 2d, 1876, is hereby repealed.

SEC. 8. Sections 1, 2, and 6 of an act entitled "An Act to provide for the payment of the indebtedness of Missoula county," approved January 24th, 1876, are hereby repealed. Section 3 of said act is hereby amended so as to read as follows: "SECTION 3. Whenever at any time there shall be paid into the redemption fund of Missoula county the sum of three hundred dollars, or more, it shall be the duty of the county treasurer of said county to give fifteen days notice by publication in some newspaper published in the county, if there be one, if none, then by posting written notices in three or more of the most public places in said county, setting forth that sealed proposals, directed to him, will be received for the surrender of county warrants issued prior to March 1st, 1877, upon any fund of the county of Missoula, and that said proposals will be received by him until the next regular meeting of the board of county commissioners thereafter."

SEC. 9. The county commissioners of Missoula county are hereby authorized to issue the bonds of said county in exchange for county warrants of any description which may have been issued prior to March 1st, 1877, whenever the holder of any such warrant

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or warrants shall offer to surrender the same in exchange for such bonds at a rate of forty per cent discount of the par value of warrants surrenderrd, and forty per cent discount of the interest due on such warrants at the time of surrender. All bonds issued under the provisions of this section shall be of the denomination of fifty, one hundred, and five hundred dollars each, and the faith of said county of Missoula is hereby pledged for the payment of the interest and the redemption of the principal. They shall be redeemable at the pleasure of said county after ten years, and become due and payable thirty years from this date, and bear interest at the rate of eight per cent per annum, payable semi-annually, on the first day of July and the first day of January, of each year. In a case where the warrants proposed to be surrendered at the discount provided for in this section, shall not equal the full amount of the bond for which such warrants are proposed to be exchanged, the party in whose name any such bond is to be issued shall pay, in cash, any such deficiency into the floating bond sinking fund of said county. The bonds provided for in this section are to be paid without publication or notice.

SEC. 10. No warrant drawn by order of the county commissioners upon the treasurer of said county, on and after March 1st, 1877, shall bear interest, nor shall any warrant be issued for a larger amount than is represented by the par cash value of the article furnished or services performed, for which such warrant may be drawn.

SEC. 11. The provisions of section 2, Chapter XCIV., of "An Act concerning county warrants, and for other purposes," approved January 11th, 1872, so far as the same relate to the county of Missoula, are hereby repealed.

SEC. 12. For the better government of said county of Missoula, it is especially provided that no officer, juror, or witness shall be entitled to demand, or receive any compensation or fee, except mileage, on account of any services at any preliminary examination, coroner's inquest, or in any action wherein the people of the territory of Montana, or the county commissioners of the county of Missoula, are parties to such action, and no mileage shall be allowed for appearance at such examination, inquest, or at the trial of any such action, unless the distance thereto and therefrom shall exceed five miles, and the demand therefor shall have been made in open court. And it is further provided, that in every conviction for any criminal

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offense, or misdemeanor, in any court in said county, judgment for costs shall be entered against the defendant, as a part of the judgment of conviction, and a lien shall attach in favor of said county to all property, real and personal, of which the accused may be possessed at the time of his arrest, for the satisfaction of any judgment that may be had against him. It shall not be lawful for any court in said county to remit any fine or costs to which said county may be entitled, or for the county commissioners of said county to release any party or parties from his or their obligations on any penal or official bond, or from any penalty or damages from failure to perform any official duty or contract, or to allow satisfaction of any of the demands of said county of Missoula, except by the payment of all such demands and bonds in full, and the performance of such contracts in accordance with the terms thereof. And, in case of the issuance of any bench warrant or attachment against the person of any defaulting witness, juror, or person held by recognizance or bond, to appear, a judgment for the costs of such proceeding shall be entered against the person adjudged to be in default, and no demand shall be allowed against said county of Missoula for such proceeding.

SEC. 13. No officer of Missoula county shall have authority to bind said county in any species of indebtedness without authority from the county commissioners of said county and in pursuance of law.

Approved February 16th, 1877.

AN ACT to change the name of Big Horn county to Custer county.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the name of Big Horn county, in Montana territory, is hereby changed to Custer county, and the said county of Big Horn shall hereafter be known and designated as Custer county.

SEC. 2. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

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SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 16th, 1877.

AN ACT to change the name of the Stinking Water river.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the name of the stream heretofore known as the Stinking Water river, situated in and traversing through the county of Madison, in the territory of Montana, is hereby changed, and the same shall forever hereafter be known as Ruby river.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 14th, 1877.

AN ACT to establish names to certain streams in Deer Lodge county, Montana territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the east fork of Flint creek, above its junction with Flint creek, commonly called "Boulder creek," shall hereafter be known by the name of Clear creek.

SEC. 2. That the creek running west from the divide between Flint and Stony creeks, and emptying into said Stony creek near the most southerly fork, upon the Bitter Root and Phillipsburg trail, commonly known as Willow creek, shall hereafter be known as "Morse's Fork."

SEC. 3. This act to be in force and take effect from and after its passage and approval by the governor.

Approved February 15th, 1877.

AN ACT to provide for the support and maintenance of the Butte City fire department.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the county commissioners of Deer Lodge county be and they are hereby authorized to levy a special tax, not

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to exceed one mill on the dollar of the assessable property within the limits of the town of Butte, for the support and maintenance of the Butte fire department.

SEC. 2. That the said county commissioners shall, at their next regular meeting in March, 1877, levy said tax for the year 1877, and thereafter it shall be levied in the same manner and at the same time as are the general taxes of said county.

SEC. 3. It is hereby made the duty of the county treasurer of Deer Lodge county to collect said tax in the same manner and at the same time as other taxes are collected.

SEC. 4. This tax shall be known as the "fire tax," and shall be paid by the county treasurer to the treasurer of the Butte Fire Company No. 1.

SEC. 5. That the treasurer of said fire company, before any of said tax shall be paid to him as hereinbefore provided, shall file in the office of the county clerk of Deer Lodge county, a bond executed to the board of county commissioners of Deer Lodge county, with two or more sufficient sureties, to be approved by said board of commissioners, in such penal sum as they may direct, conditioned that he will faithfully and honestly pay out and disburse all moneys that may be paid by virtue of his office, under the order of said fire department.

SEC. 6. It is hereby made the duty of the treasurer of said fire company to make a fair, correct, and complete statement of his receipts and expenditures, as such treasurer, to the board of county commissioners, at their annual meeting, or at such time as they may direct.

SEC. 7. That the limits of said town of Butte shall include what is known as the surveyed town plat.

SEC. 8. This act shall be in force from and after its passage.

Approved February 16th, 1877.

AN ACT to amend an act to provide for the support and maintenance of the Helena fire department.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That section 1 of an act entitled "An Act to provide for the support and maintenance of the Helena fire depart-

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ment," passed at the eighth regular session of the legislative assembly of the territory of Montana, be amended so as to read as follows, to-wit: "SECTION 1. That the county commissioners of Lewis and Clarke county be and they are hereby authorized to levy a special tax, not to exceed two mills on each dollar, annually, upon all property within the town of Helena liable to taxation, both real and personal, for the support and maintenance of the Helena fire department."

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 16th, 1877.

AN ACT to amend the Helena incorporation act.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That section 23 of Article VII. of an act entitled "An Act to incorporate the town of Helena," approved February 11th, 1876, be, and the same is hereby, amended so as to read as follows: "SECTION 23. This charter shall be submitted to the qualified electors of the city of Helena on or before the first Monday in April, A. D. 1877, and if not then approved, it may be again submitted, at such time or times as the commissioners named in this act, or a majority of them, shall direct. Such submission shall be at some one convenient place therein, and the ballots to be cast shall have written or printed thereon the words, "For the charter," or the words, "Against the charter;" and if at any submissions thereof a majority of the votes so cast shall be "For the charter," then this act shall be in full force, and the said city be deemed an incorporated city hereunder; but if a majority of the votes so cast shall read "Against the charter," then this act shall not be operative as incorporating said city, but said city shall remain unincorporated until, upon some re-submission of this act, the same shall, in the manner herein provided, be approved.

SEC. 2. That section 1 of Article IV. of said act is hereby amended so as to read as follows: "SECTION 1. That on the third Monday in May next succeeding the approval of the electors of this act, and upon each succeeding third Monday in May there-

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after, the annual election shall be held in said city. At said first election there shall be elected one mayor for the city and two aldermen for each ward, and at the succeeding elections there shall be elected one mayor, and one alderman for each ward.

SEC. 3. That the original section 23 of Article VII. of said act, and the original section 1 of article VI. of said act, be and the same are hereby repealed.

Approved February 16th, 1877.

AN ACT to provide for the relief of F. C. Deimling for expenses in rebuilding the carriage of the 12-pounder mountain howitzer stationed at Virginia City, Montana, the property of the territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. There shall be, and is hereby appropriated out of the territorial treasury the sum of fifty-eight dollars and seventy-five cents, to be paid to Francis C. Deimling, to reimburse him for the expenses incurred by him in the rebuilding of the gun carriage of the 12-pounder mountain howitzer stationed at Virginia City, Montana, thereby rendering said piece serviceable.

SEC. 2. That the territorial auditor is hereby authorized and instructed to draw his warrant on the territorial treasurer for the sum named in the first section of this act in favor of Francis C. Deimling, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 3. This act to take effect and be in force from and after its passage.

Approved February 3d, 1877.

AN ACT for the relief of W. F. Wheeler.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. There is hereby appropriated, out of the territorial treasury, the sum of sixteen dollars and fifty cents, to compensate W. F. Wheeler for moneys expended as traveling expenses in coming from and returning to Deer Lodge City, for the purpose of attending as one of the board of canvassers of the vote of 1876.

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SEC. 2. The territorial auditor is hereby authorized and instructed to draw his warrant on the territorial treasurer for the sum named in the first section of this act, in favor of W. F. Wheeler, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 3. This act to take effect and be in force from and after its passage.

Approved February 14th, 1877.

AN ACT authorizing the administrator of the estate of John H. Rodgers, deceased, to sell the property of said estate.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the administrator of the estate of John H. Rodgers, deceased, is hereby authorized and empowered to sell, in the manner provided by law, the property belonging to said estate, to the highest bidder, whether such bid shall be equal to three-fourths of the appraised value thereof or not, subject to the confirmation thereof by the probate court of Deer Lodge county, as in other cases provided for the confirmation of sales of property by executors and administrators.

Approved February 16th, 1877.

AN ACT to provide for the compensation of J. C. Kerley, Hugh McQuaid, and L. F. Lacroix, for services rendered the territory for printing the auditor's and treasurer's reports for the year 1875.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. There shall be and is hereby appropriated out of the territorial treasury the sum of two hundred and fifty-one dollars, for printing three hundred pamphlets of the auditor's and treasurer's reports of Montana territory for the year 1875.

SEC. 2. The territorial auditor is hereby authorized and instructed to draw his warrant on the territorial treasurer for the sum of two hundred and fifty-one dollars, in favor of J. C. Kerley, Hugh McQuaid, and L. F. Lacroix, to be paid out of any money in the treasury not otherwise appropriated.

Approved February 8th, 1877.

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JOINT RESOLUTIONS.

House Joint Resolution for the relief of Kerley, McQuaid, & Lacroix.

Resolved by the House, the Council concurring:

That the sum of sixty dollars be and the same is hereby appropriated out of any moneys in the territorial treasury not otherwise appropriated, to reimburse Kerley, McQuaid, & Lacroix for money expended by them in procuring copies of the laws of the ninth session of the legislative assembly of Montana for publication, and the auditor of this territory is hereby authorized to draw his warrant on the territorial treasurer for said sum of sixty dollars.

Approved February 16th, 1877.

House Joint Resolution commemorating the death of Col. George A. Custer.

WHEREAS, In the death of Col. George A. Custer, who fell at the head of his column, the army of the United States lost one of its most valiant and dashing officers; and

WHEREAS, We have a due appreciation of the courage and valor displayed by the illustrious Colonel and his command, while defending our borders against the incursions of remorseless savages; and

WHEREAS, We cannot show our admiration for the gallant Colonel and his command more appropriately than by identifying his name with the river on whose banks himself and command met their tragic fate; therefore, be it

Resolved by the Council and House of Representatives of the Territory of Montana:

That, in commemoration of the dauntless courage, the disciplined valor, and the heroic death of Col. George A. Custer, and his men

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of the seventh regiment of United States cavalry who fell with him in the battle with Sioux Indians, on the Little Big Horn river, in the territory of Montana, on the 25th day of June, A. D. 1876, the name of said Little Big Horn river shall be changed to Custer's river, and the same shall be forever hereafter known as Custer's river.

Approved February 3d, 1877.

Council Joint Resolution for the relief of George B. Parker.

Resolved by the Council, the House concurring:

That the sum of one hundred and twenty dollars shall be paid to George B. Parker, out of any moneys in the territorial treasury not otherwise appropriated, for services as an accountant and expert, assisting the joint special committee appointed to examine the books of the auditor and treasurer, and the territorial auditor is hereby required to draw his warrant in favor of said George B. Parker for said sum of one hundred and twenty dollars.

Approved February 15th, 1877.

House Joint Resolution of thanks to Joseph P. Woolman.

WHEREAS, Joseph P. Woolman, Esq., was appointed by the President of the United States as United States Centennial Commissioner for the territory of Montana, and in the discharge of this trust he collected and placed on exhibition at the United States centennial exhibition a collection of ores, cereals, etc., from this territory, which compared favorably with those from any other state or territory; and

WHEREAS, He managed the affairs of his trust so faithfully and economically that he was enabled to and did return to the territorial treasury the sum of fifteen hundred and sixty-one dollars and ten cents of the amount appropriated by the territory; therefore, be it

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Resolved by the Council and House of Representatives of the Legislative Assembly of the Territory of Montana:

That the thanks of the people of the territory of Montana are due and are hereby tendered to Joseph P. Woolman, United States Centennial Commissioner, for the faithful manner in which he discharged the duties of his position.

Approved February 14th, 1877.

Council Joint Resolution to provide for the payment of the freight on five hundred breech-loading Springfield rifle-muskets and twenty-five thousand centre-primed metallic cartridges.

Resolved by the Council and House of Representatives of Montana Territory:

That the territorial auditor be directed to draw his warrant on the territorial treasury for the sum of one thousand and eighty-one dollars and fifty-one cents ($1,081.51) in favor of B. F. Potts, to reimburse him for moneys paid for freight on five hundred breech-loading Springfield rifle-muskets and twenty-five thousand centre-primed metallic cartridges (cal. 50), from the United States arsenal at Rock Island, Illinois, to Helena, Montana.

Approved January 26th, 1877.

House Joint Resolution for the relief of George D. C. Hibbs.

Resolved by the House of Representatives of the Territory of Montana, the Council concurring:

That the sum of one hundred and fifty dollars shall be paid to George D. C. Hibbs, out of any moneys in the territorial treasury not otherwise appropriated, for services as clerk of the judiciary committees of the house of representatives and council; and the territorial auditor is hereby authorized to draw his warrant upon the territorial treasurer, in favor of the said George D. C. Hibbs, for the said sum of one hundred and fifty dollars.

Approved February 16th, 1877.

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House Joint Resolution to consider civil procedure act enrolled.

Resolved by the Legislative Council and House of Representatives:

That the engrossed bill of house bill No. 59, "A Bill for an act to provide a code of civil procedure in the territory of Montana," which, with amendments of the council, has passed both houses of this legislative assembly, and in which, by direction of the house, the enrolling clerk has engrossed the said council amendments in the presence and under the observation of the house, be considered an enrolled bill; and the president of the council and the speaker of the house of representatives are hereby requested to sign the same as an enrolled bill.

Approved February 16th, 1877.

Council Joint Resolution concerning printing of report of superintendent of public schools.

Resolved by the Council and House of Representatives of the Territory of Montana:

That the governor is hereby authorized to have printed for public distribution, five hundred (500) copies of the report, for the years 1876 and 1877, of the territorial superintendent of public instruction to the governor, and that the school law in force at the close of the tenth legislative assembly be embodied in the report. That upon the delivery of the same to the territorial superintendent of public instruction, he shall certify the fact of such delivery to the territorial auditor, who shall audit the account of the printers of said report, and draw his warrant for the amount due in their favor upon the territorial treasurer, to be paid out of any money in the territorial treasury not otherwise appropriated.

Approved February 16th, 1877.

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JOINT MEMORIALS.

Joint Memorial in relation to a mail route from Bozeman City, Montana territory, to the city of Cheyenne, in the territory of Wyoming.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the council and house of representatives of the territory of Montana, would respectfully represent to your honorable bodies, that the citizens of the territory of Montana are at the present time wholly dependent for mail facilities and means of communication with the eastern states upon one mail route, connecting our settlements with Franklin, in the territory of Idaho, which, by reason of the geographical position of our territory, is a very circuitous route and inadequate to supply our wants and necessities. That the increasing demand for mail facilities, occasioned by the rapid settlement of the country, the erection of military posts and the military operations now being carried on by the government along the line of the proposed route, urges more strongly than we can the necessity of the early establishment of said mail route, and that a contract be let at the earliest practicable moment, to carry the mail over the same, via the points hereinafter mentioned.

That settlements are now being rapidly made east of Bozeman City and Fort Ellis, at Shield's river, Big Timber, Sweet Grass, Baker's Battle Ground, at or near the cantonment of the mouth of Tongue river, and at other points along the line of the proposed mail route. That the country through which said mail route will pass contains many fertile valleys, is a fine stock growing country, and is supposed to be rich in mineral wealth.

That the establishment of this mail route would aid very materially in developing said country, and the settlement of the same, encouraged and fostered thereby, would do much toward settling the

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Indian question; besides, would accommodate many settlers now entirely deprived of mail facilities. That during the past year it was with much delay and great expense to the government that mail matter of any kind was conveyed from Fort Ellis to the army in the field, and this was only done by private and special messengers, who were employed for that purpose alone.

That the establishment of this mail route, as herein proposed, in addition to the advantages hereinbefore enumerated, would save to the government a great distance and considerable time and expense in supplying, not only the army in the field, the various military posts along the line of said route, but a large portion of eastern Montana, with mail facilities—a great want long felt by the citizens of that portion of the territory.

That it is the intention of the gentlemen engaged in the business of transporting freight from the eastern states to the territory of Montana to ascend the Yellowstone river as far as practicable, during the coming summer, with steamboats laden with goods for various points in said territory.

That the road leading from Bozeman City to Tongue river, and from thence to Cheyenne, is a good natural highway. That heavily laden wagons have passed over the same with but little trouble or delay.

Wherefore your memorialists pray that your honorable bodies establish a daily mail from Bozeman City, in Montana territory, via Fort Ellis, Shield's River, Big Timber, Sweet Grass, Baker's Battle Ground, the mouth of Tongue river, Deadwood City, in the territory of Dakota, to Cheyenne, Wyoming territory.

A. E. MAYHEW,
Speaker of the House of Representatives.

W. E. BASS,
President of the Council.

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Joint Memorial asking that certain portions of Idaho be attached to Montana.

To the Senate and House of Representatives of the United States, in Congress assembled:

We, your memorialists, the legislative assembly of Montana territory, would respectfully represent to your honorable body, that our territory is isolated from all lines of railroads now penetrating the Rocky Mountains, by reason of the intervention of large sterile tracts of land, which are included within the boundaries of another territory, and that in order to encourage capital to invest in any railroad enterprise, we will be obliged to enrich another territory directly with many thousand dollars worth of taxable property to develop its resources (if any contained therein), without receiving any encouragement or aid directly or indirectly from said territory.

We would further represent that the soil in the following described territory is barren, mostly covered with sage brush, lava, and volcanic rock, possessing little or no advantage to the settler, excepting that portion of Lemhi county herein included, the inhabitants of which are separated from their seat of government, by a natural barrier impassable a great portion of the year, and whose interests and wishes are in concert with those of your memorialists.

We would therefore memorialize your honorable body to so change the boundary line of the said Montana territory as to include within its boundaries the territory herein described: Commencing at the head of the middle fork of Bitter Root river, running directly south to a point on the forty-fourth parallel of latitude; thence southeastwardly to the Eagle Rock bridge, on Snake river; thence along the dividing ridge south of the south banks of said Snake river, in a southeastwardly direction to the head of Salt river; thence along the dividing ridge between the waters of South Snake river and those of Green river, Wind river, and the Yellowstone river, to a point on the south boundary of the Yellowstone national park.

And your memorialists will ever humbly pray.

A. E. MAYHEW,
Speaker of the House of Representatives.
W. E. BASS,
President of the Council.

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Council Joint Memorial in relation to certain territorial officers.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the legislative council and house of representatives, composing the legislative assembly of the territory of Montana, would respectfully represent that there are certain territorial officers not designated in the organic act of the territory of Montana, which are necessary and essential to a complete management and control of the territorial affairs, to-wit: Territorial treasurer, territorial auditor, and territorial superintendent of public instruction. That said officers receive their compensation for their services as such wholly from the revenues derived from the people of the territory, and are alone responsible to the people of the territory for their acts as such officers, and we believe it but a simple act of justice that the electors of the territory of Montana should be permitted to select or elect such officers in such manner as the legislative assembly of the territory of Montana might prescribe. We therefore earnestly request your honorable body to so amend the organic act of the territory of Montana, as to permit and authorize the legislative assembly of the territory of Montana to prescribe the mode and manner for the election of such officers.

And your memorialists will, as in duty bound, ever pray.

A. E. MAYHEW,
Speaker of the House of Representatives.

W. E. BASS,
President of the Council.

Joint Memorial asking aid to railroads.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the legislative council and house of representatives, composing the legislative assembly of the territory of Montana, would respectfully urge upon your attention and favorable consideration our isolated position, and the strenuous efforts we are making to overcome the great disadvantages which that posi-

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tion necessarily imposes upon us, and to ask your assistance in those efforts.

In order to connect our territory with the markets of the world, we have granted a subsidy of one million seven hundred thousand dollars for the purpose of obtaining at an early day, railroad communication with the Union Pacific and Central Pacific railroads, and also a subsidy of seven hundred thousand dollars to have rail communication with the head of navigation upon the Missouri river, at Fort Benton; such action appearing to us to be an absolute necessity to retain and increase our population and industries, and to develop our mineral and other varied resources, our opinion in this respect being amply sustained by the statistics of Colorado and Utah. We are further of opinion that these subsidies are granted to our only means of outlet in the reasonably near future, the Northern Pacific railroad company having been unable for years past, and being now unable, to continue its line towards our border; and we submit the value of these roads to the entire nation — in the greatly increased development of our great mineral resources, and to the government in the greatly reduced expense, both of money and time, of the transportation of men and stores to the military posts of the northwest. Within the limits of only three counties of our territory, there are already located and owned three hundred copper leads, producing ore which yields from twenty to thirty-five per cent of copper, and about three thousand silver leads, yielding ore of the value of fifty dollars and upwards, per ton, about one thousand of which will yield from twenty-five to sixty per cent of lead; in addition to a large number of gold bearing ledges. Much of the ore produced from these ledges, owing to its character, has to be shipped out of our territory for reduction, and only a small per centage can bear the cost of transportation, which is from sixty to seveny-five dollars per ton to New York city, besides the ocean freight to Freiberg or Swansea. Even at these rates we are precluded from shipping a greater number of tons of ore than the number of tons of merchandise that are brought into our territory, because we can only ship by the returning empty wagons. We think it fair to say, in view of all the facts, that with railroad transportation our production of ores and bullion would soon reach from fifty to seventy-five millions of dollars, per annum

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while our production of hides, wool, and all other articles would be correspondingly increased, our population augmented, and our progress toward the dignity of statehood materially hastened.

In view of the facts above mentioned, and the further fact that the aid granted to said railroad by ourselves, amount to twenty-four per cent of our present assessed valuation, and remembering that your honorable body has heretofore granted aid to enterprises of importance, we, your memorialists, most earnestly beg that you will assist our struggling territory in its sturdy efforts to take the rank which its natural resources entitle it to, by donating to it the alternate sections of land for a distance of twenty miles on each side of the line of the above mentioned railroads, within its border, for the purpose of assisting in liquidating the interest and principal of said subsidies.

And we, your memorialists, will ever pray.

A. E. MAYHEW,
Speaker of the House of Representatives.
W. E. BASS,
President of the Council.

Council Joint Memorial asking congress to aid the Northern Pacific railroad by reducing the land grant thereto, and issuing United States bonds in lieu thereof.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the council and house of representatives, composing the legislative assembly of the territory of Montana, most respectfully represent, that whereas the construction of the Northern Pacific railroad at an early day is a matter of great importance, not only to the people of the northern states and territories, the eastern and western, the Atlantic and Pacific states, but also to the whole Union and the general government; and, whereas, your memorialists firmly believe that the construction and completion of said railroad cannot be accomplished within any reasonable time without material aid from the general government in a different manner from that of the present land grant thereto; and, whereas,

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your memorialists confidently believe it would be for the interest of the United States government, in a financial point, and would have the effect to cause to be speedily constructed the said Northern Pacific railroad by the issue of United States bonds in lieu of the present land grant. Now, therefore, your memorialists do most respectfully petition your honorable body to reduce the grant of lands to said Northern Pacific railroad to the limit of one mile in width on each side of the line of said road, and to grant the said railroad, in lieu of the grant of land so reduced, the sum of eighteen thousand seven hundred and twenty dollars per mile for each mile of said railroad that may hereafter be constructed to fill up the gap and connect the constructed eastern end with the constructed western end of the said Northern Pacific railroad.

Your memorialists respectfully represent that should your honorable body favorably consider the proposition herein presented, and grant the prayer of your petitioners, the government would be taking back lands contiguous with and equal to a like quantity of lanp for which the government minimum price is two dollars and fifty cents per acre, and paying therefor at the rate of seventy-five cents per acre. Further, your memorialists feel assured such exchange would result beneficially to said railroad, and eventually be a great gain to the United States. Your memorialists do therefore earnestly solicit congress to provide laws suitable for the early accomplishment of this object. By so doing your memorialists trust that the work of construction on said road would be early commenced and pushed to a full completion within the next four years.

A. E. MAYHEW,
Speaker of the House of Representatives.
W. E. BASS,
President of the Council.

House Joint Memorial in relation to restoring a portion of the Crow Indian reservation to the public domain.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the legislative council and house of representatives, composing the legislative assembly of the territory of

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Montana, would respectfully represent to your honorable bodies that a small portion of the Crow Indian reservation, in said territory, included in the following boundaries, to-wit: commencing at the mouth of the Big Boulder, on the east side of the Yellowstone river, thence up said Boulder river to the head or source of the east fork of the same, thence south to the north boundary of the National Park, thence west to the Yellowstone river, thence down the middle of said stream to the place of beginning, is a rich mineral country, both in placer and quartz mines, embracing Emigrant, Bear, and Cement gulches, together with a number of gold-bearing quartz lodes, that are supposed to be rich.

That these placer mines were discovered, taken up, and worked by actual settlers long prior to the time that the said section of country was set apart as a portion of said Indian reservation; but the fact that the said mines are situated upon an Indian reservation, as aforesaid, has retarded their development for a long space of time, and has prevented the working of the quartz mines entirely, thereby depriving the territory and the government of a considerable revenue from that source.

That, owing to the fact that large game is very scarce, the Indians very seldom or never visit this section of country, for any purposes whatever.

That it is still occupied by about one hundred actual and *bona fide* settlers, who are engaged in farming, stock-raising, and mining, and who are desirous of obtaining titles to their property, in order that they may erect with safety the necessary machinery to work said mines more successfully. Wherefore, your memorialists pray that the section of country hereinbefore designated and described be restored to the public demain and declared open for settlement, for which your memorialists, in duty bound, will ever pray.

A. E. MAYHEW,
Speaker of the House of Representatives.

W. E. BASS,
President of the Council.

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Joint Memorial in relation to the establishment of a branch mint at Helena.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled.

Your memorialists, the council and house of representatives, comprising the legislative assembly of the territory of Montana, respectfully represent:

That the yearly increase in the products of the silver mines of this territory promises a yield, at no distant day, that will place Montana next in rank with the state of Nevada, where capital and machinery have contributed so much to the development of her vast deposits of ores, believed to be less valuable than those existing here.

That enough is already known of the silver belt in Montana to establish its great extent and richness, which, when developed, will probably prove more extensive and valuable than any in the world.

That the remoteness of Montana from established lines of railroads cuts her off from the commerce of the world, and deprives her citizens engaged in mills and mining of a participation in the benefits afforded by these conveniences.

That the gold and silver yield of the territory of Montana for the past two years amounts to the sum of $14,421,979.86.

That the value of her mines is lessened by exhaustive rates of transportation, which preclude from a foreign market her vast deposits of low grade ores, and that her mines of a higher grade are worked at a still greater disadvantage, from heavy freight tariffs imposed upon their silver bullion; and, believing that their burden would be lightened, and the interests of the general government promoted, by the conversion of the United States assay office at Helena into a *branch mint*, for the coinage of silver and gold, we, your memorialists, pray that you will take such action as will secure to the people of Montana the benefits arising from the establishment of a branch mint within the territory. And your memorialists, as in duty bound, will ever pray.

A. E. MAYHEW,
Speaker of the House of Representatives.
W. E. BASS,
President of the Council.

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Joint Memorial relating to public lands for school purposes.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the legislative council and house of representatives, composing the legislative assembly of Montana territory, would respectfully represent:

That, fully believing that a system of free common schools is absolutely necessary to prepare rising generations for the successful discharge of the duties of citizenship, as well as contributing to the elevation of character, the prevention of pauperism and crime, and promotion of the material prosperity of its citizens, the people of Montana have established, and through many years, at an increasing annual cost, have maintained such a system of schools.

The suspension of work on the North Pacific Railroad, and the delay in rendering the upper Missouri river more serviceable for purposes of commerce, have for a few years past, by placing Montana at a disadvantage, compared with other territories, deterred immigration and induced many to leave us for more favored communities, rendering our burdens heavier to be borne.

The general government having manifested its intention to foster free schools and general education by devoting a portion of the public domain to the future endowment of schools and colleges, your memorialists would respectfully represent that, in consideration of the heavy burdens of pioneering and preparatory work devolving upon the present residents of this territory, in common with others, a smaller proportion of present help would be more fruitful of good results than a large donation at a future day.

Congress having indicated its policy not to admit new states until their population should entitle them to a member of the national house of representatives, upon the basis of representation existing at the time application is made, has consequently left us little hope of escaping the restrictions of our present territorial form of government for years to come.

Your memorialists therefore pray your honorable bodies, in the discharge of their trust of guardianship, to consider the propriety of succoring us, in our days of feebleness and greatest necessity, by either selling a portion of our school lands, retaining and investing

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the principal thereof and giving us the interest of the same for the present use of our schools, or setting aside the proceeds of the sales of other lands, to a reasonable amount, for the same purpose, waiting for reimbursement from the sale of school lands whenever it is deemed wisest that they should become available for their intended use.

Believing the subject worthy of your early and favorable consideration and action, and that the situation and services of the early settlers engaged in opening up the public domain to settlement, and developing the natural resources of the same, entitle them to your favorable notice, your memorialists confidently trust the merits of their claim to plead for them.

A. E. MAYHEW,
Speaker of the House of Representatives.

W. E. BASS,
President of the Council.

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LAWS, RESOLUTIONS AND MEMORIALS

OF THE

TERRITORY OF MONTANA

PASSED AT THE

ELEVENTH REGULAR SESSION

OF THE

LEGISLATIVE ASSEMBLY,

HELD AT HELENA, THE SEAT OF GOVERNMENT OF SAID TERRITORY,
COMMENCING JANUARY 13, A. D. 1879, AND ENDING
FEBRUARY 21, A. D. 1879.

TO WHICH ARE PREFIXED

SECTIONS OF THE REVISED STATUTES OF THE UNITED STATES, AND
SUBSEQUENT ACTS OF CONGRESS, RELATING TO GOVERNMENT
IN THE TERRITORY OF MONTANA.

PUBLISHED BY AUTHORITY.

HERALD BOOK AND JOB OFFICE,
HELENA, MONTANA.
ANDREW J. FISK, PUBLIC PRINTER.
1879.

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CERTIFICATE OF AUTHENTICATION.

—o—

TERRITORY OF MONTANA, }
SECRETARY'S OFFICE, } ss.

I, JAMES H. MILLS, Secretary of the Territory of Montana, do hereby certify that the printed laws, resolutions and memorials contained in this volume are true and correct copies of all the enrolled laws, resolutions and memorials that were passed at the eleventh regular session of the Legislative Assembly of said Territory, begun January 13th, A. D. 1879, and ending February 21st, A. D. 1879, and held at Helena, the seat of government of said Territory, with the exceptions of corrections in orthography, and punctuation, and omissions or substitute words inserted in brackets.

In testimony whereof I have hereunto set my hand and affixed the great seal of said Territory. Done at Helena, the seat of government of the Territory of Montana, this 28th day of March, A. D. 1879.

[SEAL.]

JAMES H. MILLS, *Secretary.*

GOVERNOR OF MONTANA . . . . . BENJ. F. POTTS.

—o—

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THE TERRITORIES.

REVISED STATUTES OF THE UNITED STATES.

TITLE XXIII. CHAPTER ONE.

PROVISIONS COMMON TO ALL THE TERRITORIES.

SEC. 1839. Nothing in this Title shall be construed to impair the rights of person or property pertaining to the Indians in any Territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any Territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits or jurisdiction of any State or Territory; but all such Territory shall be excepted out of the boundaries, and constitute no part of any Territory now or hereafter organized until such tribe signifies its assent to the President to be embraced within a particular Territory.

Right of Indians in person and property not impaired by this Title, &c.; boundaries, &c. Mont. 26 May, 1864.

SEC. 1840. Nor shall anything in this Title be construed to affect the authority of the United States to make any regulations respecting the Indians of any Territory, their lands, property, or rights, by treaty, law, or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established, in any such Territory.

Authority to regulate Indians. Ibid.

SEC. 1841. The executive power of each Territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. He shall reside in the Territory for which he is appointed,

Executive power. Ibid.

and shall be commander-in-chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offenses against the laws of the Territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the President can be made known thereon. He shall commission all officers who are appointed under the laws of such Territory, and shall take care that the laws thereof be faithfully executed.

SEC. 1842. Every bill which has passed the legislative assembly of any Territory shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it originated, and that house shall enter the objections at large on its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house. If any bill is not returned by the governor within three days, Sundays excluded, except in Washington and Wyoming, where the term is five days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly, by adjournment sine die, prevent its return, in which case it shall not be a law: [*Provided*, That so much of this section as provides for making any bill passed by the legislative assembly of a Territory a law, without the approval of the governor, shall not apply to the Territories of Utah and Arizona.]

Veto power. Ibid.

SEC. 1843. There shall be appointed a secretary for each Territory, who shall reside within the Territory for which he is appointed, and shall hold his office for four

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years, and until his successor is appointed and qualified, unless sooner removed by the President. In case of the death, removal, resignation, or absence of the governor from the Territory, the Secretary shall execute all the powers and perform all the duties of governor during such vacancy or absence or until another governor is appointed and qualified.

Secretary. Ibid.

SEC. 1844. The secretary shall record and preserve all the laws and proceedings of the legislative assembly, and all the acts and proceedings of the governor in the executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session thereof, to the President, and two copies of the laws, within like time, to the President of the Senate, and to the Speaker of the House of Representatives, for the use of Congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the President. He shall prepare the acts passed by the legislative assembly for publication, and furnish a copy thereof to the public printer of the Territory, within ten days after the passage of each act.

Secretary's Duties. Ibid.

SEC. 1845. From and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the governors of the several Territories shall be three thousand five hundred dollars, and the salaries of the secretaries shall be two thousand five hundred dollars each.

Salaries of governors and secretaries. 23 Jan., 1873. 1 May, 1876.

SEC. 1846. The legislative power in each Territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The members of both branches of the legislative assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective legislative assemblies shall be biennial. Each legislative assembly shall fix by law the day of the commencement

Legislative power. Mont. 26 May, 1864; 3 March, 1869; 20 June, 1874.

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of its regular sessions. The members of the council and of the house of representatives shall reside in the district or county for which they are respectively elected.

SEC. 1847. Previous to the first election for members of the legislative assembly of a Territory in which Congress may hereafter provide a temporary government, the governor shall cause a census of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken by such persons and in such mode as he may designate and appoint, and the persons so appointed shall receive a reasonable compensation for their services. And the first election shall be held at such time and places, and be conduted in such manner, both as to the persons who superintend such election and the returns thereof, as the governor may direct; and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts is entitled under the act providing such temporary government for the particular Territory. The persons having the highest number of legal votes in each of the districts for members of the council shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of that house; but in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor appoints.

Census and election. Mont. 26 May, 1864.

SEC. 1848. After such first election, however, the time, place, and manner of holding elections by the people in any newly-created Territory, as well as of holding all such elections in Territories now organized, shall be prescribed by the laws of each Territory.

Time and place of holding elections. Ibid.

SEC. 1849. The aportionment of representation, which

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the governor is authorized to make by section eighteen hundred and forty-seven, in the case of a Territory hereafter erected by Congress, shall be as nearly equal as practicable among the several districts and counties for such first election of the council and house of representatives, giving to each section of the Territory representation in the ratio of its population, except Indians not taxed; and thereafter in such new Territory as well as in all Territories now organized, the legislative assemblies, respectively, may re-adjust and apportion the representation to the two houses thereof, among the several counties and districts, in such manner, from time to time, as they deem just and proper; but the number of either house, as authorized by law, shall not be increased.

Apportionment. Ibid.

SEC. 1850. All laws passed by the legislative assembly and governor of any Territory except in the Territories of Colorado, Dakota, Idaho, Montana, and Wyoming, shall be submitted to Congress, and, if disapproved, shall be null and of no effect.

Laws to be submitted to Congress. Ibid.

SEC. 1851. The legislative power of every Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

Extent of legislative power. Ibid.

SEC. 1852. The sessions of the legislative assemblies of the several Territories of the United States shall be limited to forty days' duration.

Limit of time of sessions. 23 Jan., 1873.

SEC. 1853. The members of each branch of the several territorial legislatures shall receive a compensation of six dollars per day during the sessions herein provided for, and they shall receive such mileage as now provided by law: *Provided*, That the president of the council and the speaker of the house of representatives shall each receive a compensation of ten dollars per day.

Compensation of members. 23 Jan., 1873.

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SEC. 1854. No member of the legislative assembly of any Territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly in any Territory hereafter organized; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of any Territory. The exception of postmasters shall not apply in the Territory of Washington.

Members of legislature prohibited from holding certain offices.
Mont. 26 May, 1864.

SEC. 1855. No law of any territorial legislature shall be made or enforced by which the governor or secretary of a Territory, or the members or officers of any territorial legislature are paid any compensation other than that provided by the laws of the United States.

Prohibition of extra compensation to certain officers.
23 Jan., 1873.

SEC. 1856. Justices of the peace and all general officers of the militia in the several Territories shall be elected by the people in such manner as the respective legislatures may provide by law.

Election of justices of the peace and militia officers.
Mont. 26 May, 1864.

SEC. 1857. All township, district, and county officers except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each Territory; and all other officers not herein otherwise provided for, the governor shall nominate, and by and with the advice and consent of the legislative council of each Territory, shall appoint; but, in the first instance, where a new Territory is hereafter created by Congress, the governor alone may appoint all the officers referred to in this and the preceding section and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly.

Other officers.
Ibid.

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SEC. 1858. In any of the Territories, whenever a vacancy happens from resignation or death, during the recess of the legislative council, in any office which, under the organic act of any Territory, is to be filled by appointment of the governor, by and with the advice and consent of the council, the governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative council.

Vacancies, how filled. 8 June, 1872.

SEC. 1859. Every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in any Territory hereafter organized, and who are actual residents of such Territory at the time of the organization thereof, shall be entitled to vote at the first election in such Territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

Qualifications of voting and holding office at first election. Mont. 26 May, 1864.

SEC. 1860. At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each Territory; subject, nevertheless, to the following restrictions on the power of the legislative assembly, namely:

At future elections. Ibid.

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the Constitution and Government of the United States.

Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color, or previous condition of servitude.

25 Jan., 1867.

Third. No officer, soldier, seaman, mariner, or other person in the Army or Navy, or attached to troops in the service of the United States, shall be allowed to vote in any Territory, by reason of being on service therein,

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unless such Territory is, and has been for the period of six months, his permanent domicile.

Fourth. No person belonging the Army or Navy shall be elected to or hold any civil office or appointment in any Territory.

Subordinate officers of legislature. 23 Jan., 1873.

SEC. 1861. The subordinate officers of each branch of every legislative assembly shall consist of one chief clerk, who shall receive a compensation of eight dollars per day, and of one assistant clerk, one enrolling clerk, one engrossing clerk, one sergeant-at-arms, one doorkeeper, one messenger, and one watchman, who shall each receive a compensation of five dollars per day during the sessions, and no charge for a greater number of officers and attendants, or any larger per diem, shall be allowed or paid by the United States to any Territory.

Delegate to Congress. Mont. 26 May, 1864.

SEC. 1862. Every Territory shall have the right to send a Delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate hall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.

Time, places, and manner of electing Delegate. Ibid.

SEC. 1863. The first election of a Delegate in any Territory for which a temporary government is hereafter provided by Congress shall be held at the time and places and in the manner the governor of such Territory may direct, after at least sixty days' notice, to be given by proclamation; but at all subsequent elections therein, as well as at all elections for a Delegate in organized Territories, such time, places, and manner of holding the election shall be prescribed by the law of each Territory. [See § 25.]

SEC. 1864. The supreme court of every Territory shall consist of a chief justice and two associate justices,

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any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the Territory for which they are respectively appointed.

Supreme courts of Territories. Ibid.

SEC. 1865. Every Territory shall be divided into three judicial districts; and a district court shall be held in each district of the Territory by one of the justices of the supreme court, at such time and place as may be prescribed by law; and each judge, after assignment, shall reside in the district to which he is assigned.

Judicial districts and courts. Ibid.

SEC. 1866. The jurisdiction, both appellate and original, of the courts provided for in section nineteen hundred and seven and nineteen hundred and eight, shall be limited by law.

Jurisdiction of courts. Ibid, 7 April, 1874.

SEC. 1867. No justices of the peace in any Territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question.

Jurisdiction of justices of the peace. Ibid.

SEC. 1868. The supreme court and the district courts, respectively, of every Territory, shall possess chancery as well as common law jurisdiction.

Chancery and common law jurisdiction. Ibid.

SEC. 1869. Writs of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the district courts to the supreme court of all the Territories, respectively, under such regulation as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in that court.

Appellate jurisdiction of supreme court. Ibid.

SEC. 1870. The supreme court of each Territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

Clerk of supreme court. Mont. 26 May, 1864.

SEC. 1871. Each judge of the supreme court of the respective Territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is

Clerk of district court. Ibid.

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already appointed, and only such district clerk shall be entitled to a compensation from the United States.

Register in chancery; residence and office. Ibid.

SEC. 1872. Every district clerk shall be also the register in chancery, and shall reside and keep his office at the place where the court is held.

Judicial districts; how defined. Ibid.

SEC. 1873. Temporarily, and until otherwise provided by law, the governor of every Territory which may be hereafter established shall define, by proclamation, the judicial districts of such Territory, and assign the judges appointed for such Territory to the several districts as well as fix the times and places for holding courts in the respective counties or sub-divisions of each judicial district.

Judges of supreme court to hear certain causes. Ibid.

SEC. 1874. The judges of the supreme court of each Territory are authorized to hold court within their respective districts, in the counties wherein, by the laws of the Territory, courts have been or may be established, for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the Territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

District attorneys. Ibid.

SEC. 1875. There shall be appointed in each Territory a person learned in the law, to act as attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the President.

Marshals. Ibid.

SEC. 1876. There shall be appointed a marshal for each Territory. He shall execute all process issuing from the territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law on the marshals for the several judicial districts of the United States. He shall hold his office for four years and until his successor is appointed and qualified, unless sooner removed by the President.

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SEC. 1877. The governor, secretary, chief justice, and associate justices, attorney, and marshal of every Territory shall be nominated and, by and with the advice and consent of the Senate, appointed by the President.

Appointment of governor, &c. Ibid.

SEC. 1878. The governor and secretary for each Territory shall, before they act as such, respectively take an oath before the district judge, or some justice of the peace in the limits of the Territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the Chief Justice or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers appointed for any Territory, before they act as such, shall take a like oath before the governor or secretary, or some judge or justice of the peace of the Territory who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as above directed; but after the first qualification of the officers herein specified in the case of a new Territory, as well as in all organized Territories, the like oath shall be taken, certified, and recorded in such manner and form as may be prescribed by the law of each Territory.

Oath of office; how qualified. Ibid. 1 May, 1876.

SEC. 1879. The annual salary of the chief justice and associate justices of all the Territories now organized shall be three thousand dollars each.

Salaries of justices. 17 June, 1870.

SEC. 1880. The salary of the attorney of the United States for each Territory shall be at the rate of two hundred and fifty dollars annually.

Salary of attorney. Mont. 26 May, 1864.

SEC. 1881. The salary of the marshal of the United States for each Territory shall be at the rate of two hundred dollars a year.

Salary of marshal. Ibid.

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When salaries to be paid, &c. Ibid.

SEC. 1882. The salaries provided for in this Title, to be paid to the governor, secretary, chief justices and associate justices, district attorney, and marshal of the several Territories, shall be paid quarter-yearly at the Treasury of the United States.

Fees of clerks, &c. 23 June, 1874.

SEC. 1883. The fees and costs to be allowed to the United States attorneys and marshals, to the clerks of the supreme and district courts, and to jurors, witnesses, commissioners, and printers, in the Territories of the United States shall be the same for similar services by such persons as prescribed in chapter sixteen, Title "THE JUDICIARY," and no other compensation shall be taxed or allowed.

Salary not to be paid when officer is absent. Mont. 26 May, 1864.

SEC. 1884. When any officer of a Territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the President, who shall officially certify his opinion of such cause to the proper accounting officer of the Treasury, to be filed in his office.

Seat of government in a new Territory. Ibid.

SEC. 1885. The legislative assembly of every Territory hereafter organized shall hold its first session at such time and place in the Territory as the governor thereof shall appoint and direct; and at the first session of the legislative assembly, or as soon thereafter as it may be deemed expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for the Territory at such place as they may think proper; but such place shall thereafter be subject to be changed by the governor and legislative assembly.

Accounts of the Territories; no payments unless approved by Congress. Mont. 26 May, 1864.

SEC. 1886. All accounts for disbursements, in the Territories of the United States, of money appropriated by Congress for the support of government therein, shall be settled and adjusted at the Treasury Department; and no act, resolution, or order of the legislature of any Territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but

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sufficient vouchers and proof for the same shall be required by the accounting officers of the Treasury. No payment shall be made or allowed, unless the Secretary of the Treasury has estimated therefor and the object been approved by Congress. No session of the legislature of a Territory shall be held until the appropriation for its expenses has been made.

SEC. 1887. Hereafter no expense for printing, exceeding four thousand dollars, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the legislature of any of the Territories.

Limitation on expenses of printing. 8 May, 1872. 19 June, 1878.

SEC. 1888. No legislative assembly of a Territory shall, in any instance or under any pretext, exceed the amount appropriated by Congress for its annual expenses.

Limitation on expenses of legislature. Mont. 26 May, 1864.

SEC. 1889. The legislative assemblies of the several Territories shall not grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, or the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association.

Legislatures not to grant special charters. 2 March, 1867. 10 June, 1872.

SEC. 1890. No corporation or association for religious or charitable purposes shall acquire or hold real estate in any Territory, during the existence of the Territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

Limitation on right of religious corporations to hold real estate. Mont. 26 May, 1864.

SEC. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized

Constitution and laws of the United States made applicable to all the Territories. Mont. 26 May, 1864.

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Territories, and in every Territory hereafter organized, as elsewhere within the United States.

Penitentiaries. 10 Jan., 1871.

SEC. 1892. Any penitentiary which has been, or may hereafter be, erected by the United States in an organized Territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the Territory or district in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming, and Colorado.

Rules for their government. 10 Jan., 1871.

SEC. 1893. The Attorney General of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the Attorney General.

Payment of marshal, &c., and of expenses of subsistence, &c., of offenders Ibid.

SEC. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

Imprisonment in penitentiaries Ibid.

SEC. 1895. Any person convicted by a court of competent jurisdiction in a Territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such Territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offense against the laws of the United States.

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CHAPTER TWO.

OF PROVISIONS CONCERNING PARTICULAR ORGANIZED TERRITORIES.

SECTIONS RELATING TO THE TERRITORY OF MONTANA.

SEC. 1903. All that part of the territory of the United States included within the following limits, to wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west, on the forty-fifth degree of latitude, to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south, along the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky Mountains; thence following the crest of the Rocky Mountains northward till its intersection with the Bitter Root Mountains; thence northward, along the crest of the Bitter Root Mountains, to its intersection with the thirty-ninth degree of longitude west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary-line of the British Possessions; thence eastward, along that boundary-line to the twenty-seventh degree of longitude west from Washington; thence southward, along the twenty-seventh degree of longitude, to the place of beginning, is created into a temporary government by the name of the Territory of Montana.

Boundaries and establishment of Montana. 26 May, 1864.

SEC. 1906. The Delegate to the House of Representatives from each of the Territories of Washington, Idaho, and Montana, must be a citizen of the United States.

Delegate to Congress from Montana must be a citizen of the United States. Ibid.

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The judicial power—how vested in Montana.

SEC. 1907. The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana, and Wyoming, shall be vested in a supreme court, district courts, probate courts, and in justices of the peace.

SEC. 1909. Writs of error and appeals from the final decisions of the supreme court of either of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, shall be allowed to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the supreme courts created by this Title, or of any judge thereof, or of the district courts created by this Title, or of any judge thereof, upon writs of habeas corpus involving the question of personal freedom.

Writs of error to United States Supreme Court. Ibid. 23 June, 1874.

SEC. 1910. Each of the district courts in the Territories mentioned in the preceding section shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of the respective district courts, or so much thereof as is necessary, shall be appropriated to the trial of causes arising under such Constitution and laws; but writs of error and appeals in all such cases may be had to the supreme court of each Territory, as in other cases.

Jurisdiction of district courts under Constitution, &c. Ibid.

SEC. 1914. The judges of the supreme courts of the Territories of Idaho and Montana, or a majority of them, shall, when assembled at their respective seats of government, define the judicial districts of each of such Territories, and assign the judges who may be appointed for each of such Territories to the several districts; and shall also fix the times and places for holding court in

Judges of supreme court in Idaho and Montana to define judicial districts &c. Mont. 2 Mar., 1867.

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the several counties or sub-divisions in each of such judicial districts, and alter the times and places of holding the courts, as to them may seem proper and convenient; but not less than two terms a year shall be held at each place of holding court in the Territory of Montana.

SEC. 1922. The councils of New Mexico and Utah shall each consist of thirteen members, and the house of representatives of twenty-six members. The council of Washington Territory shall consist of nine members, and the house of representatives of eighteen members, which may be increased to thirty. The councils of Colorado and Dakota shall each consist of nine members, which may be increased to thirteen, and the house of representatives of thirteen members, which may be increased to twenty-six. The council of Arizona shall consist of nine members, and the house of representatives of eighteen members. The councils of Idaho and Montana shall each consist of seven members, which may be increased to thirteen, and the house of representatives of thirteen members, which may be increased to twenty-six. The council of Wyoming shall consist of nine members, which may be increased to thirteen, and the house of representatives of thirteen members, which may be increased to twenty-seven.

Number of council and house of representatives in each Territory. Mont. 26 May, 1864. 19 June, 1878.

SEC. 1923. In each of the Territories of Washington, Idaho, and Montana, the governor shall have power to call the legislative assembly together by proclamation, on an extraordinary occasion, at any time.

Extra sessions legislative assembly in Montana. Mont. 26 May, 1864.

SEC. 1926. Justices of the peace, in the Territories of New Mexico, Utah, Washington, Dakota, Idaho, Montana, and Wyoming, shall not have jurisdiction of any matter in controversy where the debt or sum claimed exceeds one hundred dollars.

Jurisdiction of justices of the peace in New Mexico and other Territories. Ibid.

SEC. 1932. The probate courts of the Territory of Montana, in their respective counties, in addition to their probate jurisdiction, are authorized to hear and determine civil causes wherein the damage or debt claimed

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Jurisdiction of probate courts in Montana. 2 March, 1867.

does not exceed five hundred dollars, and such criminal cases arising under the laws of the Territory as do not require the intervention of a grand jury; but they shall not have jurisdiction of any matter in controversy when the title or right to the peaceable possession of land may be in dispute, or of chancery or divorce causes; and in all cases an appeal may be taken from any order, judgment, or decree of the probate courts to the district court.

Contingent expenses of certain Territories. Mont. 26 May, 1864.

SEC. 1935. There shall be appropriated, annually, one thousand dollars, to be expended by the respective governors, to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, including the salary of the clerk in the executive departments of those Territories.

Control of penitentiaries in Montana, Idaho &c., transferred to said Territories. 24 Jan., 1873.

SEC. 1936. The care and custody of the penitentiaries in Montana, Idaho, Wyoming, and Colorado, and the personal property thereunto belonging, and the use and occupation thereof, are transferred to such Territories, respectively, until otherwise ordered by the Attorney General; but the legal title to such penitentiaries and the property shall continue to vest in the United States.

Expenses of maintenance of prisoners to be paid from judiciary fund. Ibid. 20 June, 1874.

SEC. 1937. The Territories named in the preceding section shall keep and maintain, in the penitentiaries transferred to their custody and control, all persons convicted in such Territories of violations of the laws of the United States, and sentenced to imprisonment therefor, and all persons held to answer for alleged violations of the laws of the United States in such Territories, at the rate and price, to be paid by the United States out of the judiciary fund, of one dollar per day for each person so imprisoned.

Legislative expenses in Washington, Idaho, and Montana. Mont. 26 May, 1864.

SEC. 1940. There shall be appropriated, respectively, for the Territories of Washington, Idaho, and Montana, annually, a sufficient sum, to be expended by the secretary of each Territory herein named upon an estimate to be made by the Secretary of the Treasury, to defray the expenses of the legislative assembly and other inci-

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dental expenses. The governor and secretary of each Territory above specified shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury, and shall, semi-annually, account to such Secretary for the manner in which such sums of money have been expended.

No payment of salaries in certain Territories until officers enter on their duties. Ibid.

SEC. 1941. No payment of salary shall be made to the governor, secretary, chief justice, and associate justices of Washington, Idaho, and Montana Territories until such officers have entered upon the duties of their respective appointments.

Mileage in Idaho and Montana. Ibid.

SEC. 1943. The members of the legislative assembly of Idaho and Montana Territories shall each receive four dollars for every twenty miles' travel in going to and returning from the sessions of their respective bodies, estimated according to the nearest usually traveled route.

Seat of government; how changed in Idaho and Montana. Ibid.

SEC. 1945. The seat of government, when once fixed by the governor and legislative assembly of Idaho and Montana, respectively, shall not be at any time changed except by an act of such assembly for each Territory, respectively, duly passed and approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

School lands in certain Territories. Ibid.

SEC. 1946. Sections numbered sixteen and thirty-six, in each township of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming shall be reserved for the purpose of being applied to schools in the several Territories herein named, and in the States and Territories hereafter to be erected out of the same.

Disbursing officers in Washington, Idaho, and Montana to give security. Ibid.

SEC. 1951. All officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territories of Washington, Idaho, and Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be intrusted to them for disbursement, shall give such security at such

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time and in such manner as the Secretary of the Treasury may prescribe.

SESSION LAWS OF CONGRESS

RELATING TO GOVERNMENT IN MONTANA.

ENACTED SUBSEQUENT TO THE REVISION.

FORTY-THIRD CONGRESS. SESSION I. CHAPTER 80.—An act concerning the practice in territorial courts, and appeals therefrom.

WHEREAS, by the Organic Acts establishing several of the Territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts having been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said Territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceeding in all cases legal and equitable, are repugnant to the said organic acts respectively: Therefore,

Preamble.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be necessary in any of the courts of the several Territories of the United States to exercise separately the common-law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in said Territories respectively, in so far as they authorize a mingling of said jurisdictions or a uniform course of proceeding in all cases, whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts in conformity with said respective codes and rules of prac-

Common law and chancery jurisdiction of territorial courts.

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tice, so far as relates to the form and mode of proceeding, be, and the same are hereby, validated and confirmed: *Provided*, That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law.

Trial by jury.

SEC. 2. That the appellate jurisdiction of the Supreme Court of the United States over the judgments and decrees of said territorial courts in cases of trial by jury shall be exercised by writ of error, and in all other cases by appeal according to such rules and regulations as to form and modes of proceeding as the said Supreme Court have prescribed or may hereafter prescribe: *Provided*, That on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court, together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said Supreme Court, heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal: *And provided further*, That the appellate may make any order in any case heretofore appealed, which may be necessary to save the rights of the parties; and that this act shall not apply to cases now pending in the Supreme Court of the United States where the record has already been filed.

Appellate jurisdiction of Supreme Court of United States; how exercised.

Proceedings on appeal.

Proviso.

Approved April 7, 1874.

IBID. CHAP. 332.—An act to amend the act entitled "an act transferring the control of certain territorial penitentiaries to the several Territories in which the same are located," approved January twenty-fourth, eighteen hundred and seventy-three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the act entitled "An act transferring the control of certain territorial penitentiaries to the several Territories in which the same are located" approved

Penitentiaries in Montana, Idaho, and Wyoming Territories

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January twenty-fourth, eighteen hundred and seventy-three, be, and the same is hereby, amended by striking out the words Montana, Idaho, and Wyoming, wherever the same occur in said act, and the said act shall hereafter have no applicability to the Territories of Montana, Idaho, and Wyoming.

To continue under control of United States marshals.

SEC. 2. That the penitentiaries in the Territories of Montana, Idaho and Wyoming, shall continue under the care and control of the marshal of the United States for said Territories, under and pursuant to the provisions of the act entitled "An act in relation to certain territorial penitentiaries," approved January tenth, eighteen hundred and seventy-one; which said last mentioned act is hereby revived and reenacted so far as the same applies to the Territories of Montana, Idaho, and Wyoming.

Approved June 20, 1874.

FORTY-THIRD CONGRESS. SESSION II, CHAPTER 114. An act to protect all citizens in their civil and legal rights.

Preamble.

WHEREAS, it is essential to just government we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law; Therefore,

Equal enjoyment of inns, public conveyances, theatres, &c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for rea-

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sons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall also, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided*, That all persons may elect to sue for the penalty aforesaid or to proceed under their rights at common law and by State statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceedings, either under this act or the criminal law of any State: *And provided further*, That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively.

Forfeit to person aggrieved by denial of equal enjoyment of inns, &c.

Punishment for denying, &c.

Election of remedies.

Effect of recoveries.

SEC. 3. That the district and circuit courts of the United States shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses against, and violations of, the provisions of this act; and actions for the penalty given by the preceding section may be prosecuted in the territorial, district, or circuit courts of the United States wherever the defendant may be found, without regard to the other party; and the district attorneys, marshals and deputy marshals of the United States, and commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting and imprisoning or bailing offenders against the laws of the United States, are hereby specially authorized and required to institute proceedings against every person who shall violate the provisions of this act, and cause him to be arrested and imprisoned or bailed,

Jurisdiction of courts under this act.

Duty of district attorneys, marshals, and commissioners, under this act.

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as the case may be, for trial before such court of the United States, or territorial court, as by law has cognizance of the offence, except in respect of the right of action accruing to the person aggrieved; and such district attorneys shall cause such proceedings to be prosecuted to their termination as in other cases: *Provided*, That nothing contained in this section shall be construed to deny or defeat any right of civil action accruing to any person, whether by reason of this act or otherwise; and any district attorney who shall willfully fail to institute and prosecute the proceedings herein required, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action of debt, with full costs, and shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than one thousand nor more than five thousand dollars: *And provided further*, That a judgment for the penalty in favor of the party aggrieved against any such district attorney, or a judgment upon an indictment against any such district attorney, shall be a bar to either prosecution respectively.

Right of civil action not affected.

Failure of district attorney to prosecute.

Effect of judgment against district attorney.

Exclusion from service as juror.

SEC. 4. That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars.

Penalty for excluding, &c.

SEC. 5. That all cases arising under the provisions of this act in the courts of the United States shall be reviewable by the Supreme Court of the United States without regard to the sum in controversy, under the same provisions and regulations as are now provided by law for the review of other causes in said court.

Review in Supreme Court.

Approved March 1, 1875.

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FORTY-FOURTH CONGRESS. SESSION I. CHAP. 88. EXTRACT. * * * * And hereafter payment of salaries of all officers of the Territories of the United States appointed by the President shall commence only when the person appointed to any such office shall take the proper oath, and shall enter upon the duties of such office in such Territory; and said oath shall hereafter be administered in the Territory in which such office is held.

Salaries of territorial officers, when to commence.

Oaths, where administered.
1 May, 1876.

IBID. CHAP. 287. EXTRACT. Territory of Montana: * * * * * *Provided*, That the next legislative assembly shall convene at the seat of government of the Territory on the second Monday of January, eighteen hundred and seventy-seven, and biennially thereafter.

Sessions of legislature.
15 Aug., 1876.

FORTY-FOURTH CONGRESS. SESSION II. CHAP. 107. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That it shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such" and upon payment of twenty-five cents per acre—to file a declaration under oath with the register and receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one section, by conducting water upon the same, within the period of three years thereafter, *Provided however* that the right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon bona fide prior appropriation: And such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation: And all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of

Desert lands may be purchased.

Declaration.

3 March, 1877.

Right to use water.

Water on public lands to be free.

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the public for irrigation, mining and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him. *Provided*, that no person shall be permitted to enter more than one tract of land, and not to exceed six hundred and forty acres, which shall be in compact form.

Contents of declaration.

Perfection of title.

Limit to quantity of land purchasable.

SEC. 2. That all lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated.

Desert lands defined.

SEC. 3. This act shall only apply to and take effect in the States of California, Oregon and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota, and the determination of what may be considered desert land shall be subject to the decision and regulation of the Commissioner of the General Land Office.

Localities in which act to apply.

FORTY-FIFTH CONGRESS. SESSION II. CHAP. 37. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offences, and misdemeanors, in the United States courts, territorial courts, and courts-martial, and courts of inquiry, in any State or Territory,

Accused persons may testify 16 Mch., 1878.

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including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him.

IBID. CHAP. 76. EXTRACT. * * * * * *And provided further*, That where wood and timber lands in the Territories of the United States are not surveyed and offered for sale in proper sub-divisions, convenient of access, no money herein appropriated shall be used to collect any charge for wood or timber cut on the public lands in the Territories of the United States for the use of actual settlers in the Territories, and not for export from the Territories of the United States, where the timber grew: *And provided further*, That if any timber cut on the public lands shall be exported from the Territories of the United States, it shall be liable to seizure by the United States authority wherever found.

Wood cut on unsurveyed land 30 April, 1878.

IBID. CHAP. 150. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all citizens of the United States and other persons, bona fide residents of the State of Colorado, or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time bona-fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, The provisions of this act shall not extend to railroad corporations.

Timber and mineral lands may be taken for certain purposes. 3 June, 1878.

Proviso.

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SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and, if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.

Taking, &c., for unauthorized purposes.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

Penalty.

IBID. CHAP. 168. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the words "the legislative assemblies of the several Territories shall not grant private charters or especial privileges" in section eighteen hundred and eighty-nine of the Revised Statutes of the United States shall not be construed as prohibiting the legislative assemblies of the several Territories of the United States from creating towns, cities, or other municipal corporations, and providing for the government of the same, and conferring upon them the corporate powers and privileges, necessary to their local administration, by either general or special acts; and that all general and special acts of such legislative assemblies heretofore passed creating and providing for the government of towns, cities, or other municipal corporations, and conferring such rights, powers and privileges upon the same, as were necessary to their local administration, be, and the same are hereby, ratified and confirmed and declared

Municipal corporations in Territories. 8 June, 1878. Sec. 1889, R. S., page 133, construed.

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to be valid, any law to the contrary notwithstanding, subject, however, to amendment or repeal hereafter by such territorial assemblies. But nothing herein shall have the effect to create any private right, except that of holding and executing municipal offices or to divest any such right, or to make valid or invalid any contract or obligation heretofore made by or on behalf of any such town, city, or other municipal corporation, or to authorize any such corporation to incur hereafter any debt or obligation other than such as shall be necessary to the administration of its internal affairs.

Private rights.

Contracts.

Corporation debts.

IBID. CHAP. 329. EXTRACT. * * * * * * * *

Councils and houses of representatives in Territories. 19 June, 1878.

That from and after the adjournment of the next session of the several territorial legislatures the council of each of the Territories of the United States shall not exceed twelve members, and the house of representatives of each shall not exceed twenty-four members, and the members of each branch of the said several legislatures shall receive a compensation of four dollars per day each during the sessions provided by law, and shall receive such mileage as the law provides; and the president of the council and the speaker of the house of representatives shall each receive six dollars per day for the same time. And the several legislatures at their next sessions are directed to divide their respective Territories into as many council and representative districts as they desire, which districts shall be as nearly equal as practicable, taking into consideration population, except "Indians not taxed:" *Provided*, The number of council districts shall not exceed twelve, and the representative districts shall not exceed twenty-four in any one of said Territories, and all parts of sections eighteen hundred and forty-seven, eighteen hundred and forty-nine, eighteen hundred and fifty-three, and nineteen hundred and twenty-two of the Revised Statutes of the United States in conflict with the provisions herein are repealed.

Number.

Compensation.

Districts.

Proviso.

That the subordinate officers of each branch of said

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Officers of legislatures. Salaries.

territorial legislatures shall consist of one chief clerk, who shall receive a compensation of six dollars per day; one enrolling and engrossing clerk, at five dollars per day; sergeant-at-arms and doorkeeper, at five dollars per day; one messenger and watchman, at four dollars per day each; and one chaplain, at one dollar and fifty cents per day. Said sums shall be paid only during the sessions of said legislatures; and no greater number of officers or charges per diem shall be paid or allowed by the United States to any Territory. And section eighteen hundred and sixty-one of the Revised Statutes is hereby repealed, and this substituted in lieu thereof: *Provided*,

Secretary's fees.

That for the performance of all official duties imposed by the territorial legislatures, and not provided for in the organic act, the secretaries of the Territories respectively shall be allowed such fees as may be fixed by the territorial legislatures. And in no case shall the expen-

Printing.

diture for public printing in any of the Territories exceed the sum of two thousand five hundred dollars for any one year.

IBID. CHAP. 362. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the right of way through

Utah & Northern Railway Company. 20 June, 1878.

the public lands of the United States and other privileges heretofore granted by law to the Utah Northern Railroad Company are hereby modified and regranted so as to enable the Utah and Northern Railway Company and

Right of way modified.

its assigns to build their road by the way of Marsh Valley, Portneuf River and Snake River Valley, instead of by the way of Soda Springs and Snake River Valley as originally granted.

SEC. 2. And said Company is hereby made a railway

To be a corporation in Utah, Idaho, and Montana.

corporation in the Territories of Utah, Idaho, and Montana, under the same conditions and limitations and with the same rights and privileges that it now has and enjoys under it sarticles of incorporation. *Provided*, That

Proviso

said corporation shall at all times hereafter be subject to

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all the laws and regulations in relation to railroads of the United States or of any territory or state through which it may pass. And suits against said corporation may be instituted in the courts of said Territories or either of them having jurisdiction by the laws of such Territory. Suits.

SEC. 3. Congress may at any time add to, alter, amend or repeal this act. Amendments.

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LAWS OF MONTANA.

ENACTED BY THE ELEVENTH LEGISLATIVE ASSEMBLY

ASSESSORS—DEPUTIES.

AN ACT authorizing assessors to appoint a deputy.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the several assessors and ex-officio assessors of the several counties may, by and with the consent and approval of the board of county commissioners, appoint one deputy, who shall be sworn and give a bond the same as the principal himself, and such deputy may do and perform, under the direction of said county commissioners, any and all official acts and duties that the assessor is now required by law to do and perform.

May appoint one deputy.

Approved February 20, 1879.

ASSESSORS—FEES.

AN ACT to establish and regulate the fees of assessors.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the assessors of each county shall be entitled to receive from their respective counties, as fees, a percentage of the assessed valuation returned by them (subject to all reductions made by the board of equal-

Fees of assessors fixed.

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ization) of not less than one-half of one mill on the dollar, nor more than one mill on the dollar, as the board of county commissioners may deem just: *Provided*, That nothing in this act shall be construed to apply to those counties where the sheriffs are ex-officio assessors thereof. Proviso.

Sec. 2. It shall be the duty of assessors to enter upon all assessment lists returned by them the special poor tax now required by law, and they shall be entitled to receive thereon the same compensation allowed them for the assessment of property in their county; but, for the collection of the special poor tax, of persons who pay no property tax, they shall be entitled to receive twenty per cent. thereof. Special poor tax.

Approved February 21, 1879.

BISON.

AN ACT to protect bison in certain counties in Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana.

Section 1. That any person who shall wilfully shoot, or otherwise kill, for the period of ten years from and after the passage of this act, any buffalo or bison within the counties of Madison, Jefferson, Deer Lodge and Lewis and Clarke, Montana Territory, shall be fined not less than one hundred dollars, nor more than two hundred dollars; or imprisoned in the county jail not less than two months and not more than six months, or, both such fine and imprisonment, at the discretion of the court. Killing of buffalo prohibited in certain counties.

Sec. 2. That the possession of the green hides, or the dead bodies, or any part thereof, of any buffalo or bison, by any person or persons, within the the limits of said counties, shall be taken as *prima facie* evidence that such person or persons are guilty of killing the same. Prima facie evidence.

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Informer's reward.

Sec. 3. Any person informing on any person violating the provisions of section one of this act shall, upon the conviction of such person, be entitled to one-fourth of the fine collected.

Charge to juries.

Sec. 4. It is hereby made the duty of the judges of the district courts held in the respective counties of Deer Lodge, Jefferson, and Lewis and Clarke, to give in charge to the grand juries of said counties the provisions of this act.

Sec. 5. This act shall take effect and be in force from and after its approval.

Approved February 21, 1879.

BOUNTY.

AN ACT prescribing a bounty for the destruction of certain animals.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Bounties for killing bears, mountain lions, and panthers.

Section 1. From and after the passage of this act, the county commissioners may, when they deem it advisable for the best interest of their respective counties, offer a bounty to be paid as hereinafter provided: The sum of five dollars for each bear, and three dollars for each mountain lion or panther slain or killed in said county: *Provided*, That any person killing, or causing to have been killed, any one of the above named animals, shall, within thirty days from date of killing said animal or animals, exhibit the entire scalp or scalps, consisting of the skin from the forehead, embracing the ears of each animal, to any probate judge or acting justice of the peace within the county in which the said animal or animals were killed, and shall file his affidavit with the said officer setting forth that the animal or animals from which the scalps were taken was killed within the bounds of the county in which the application for bounty is claimed. The said probate judge or justice of the

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peace, as the case may be, shall examine minutely each scalp presented, in order to prevent fraud or counterfeit; and should said officer, after careful examination, find the said scalp or scalps to be genuine, he shall mark each scalp by punching a hole one-half of an inch in diameter in each ear and furnish the party presenting the said scalp or scalps with a certificate of the number, and species, of the animals from which they were taken; and he shall receive for his services from the party receiving the certificate the sum of fifty cents for each bear scalp, and the sum of twenty-five cents for each mountain lion or panther scalp. Fees of officer.

Sec. 2. It shall be the duty of the board of county commissions to take up all certificates presented, that have been issued under the provisions of section one of this act, and shall give the person presenting the certificate an order on the county treasurer for the amount as specified in section one of this act. The party presenting the certificate shall receipt upon the back of the certificate the full amount for which the order was given. Payment of bounties.

Sec. 3. The counties of Choteau and Custer are excepted from the operation of this act. Counties excepted.

Approved February 19, 1879.

BUTCHERS TO RECORD BRANDS.

AN ACT to compel butchers to record brands.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. From and after the passage of this act, it shall be the duty of all butchers slaughtering cattle in this Territory to keep a true and correct record of all marks and brands of all cattle slaughtered by them, recording also the name or names of persons from whom the said cattle were bought, together with their residence and date of purchase and delivery of said cattle. To record the brands of all cattle slaughtered.

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The said record shall be kept in a suitable book, in the said butcher's place of business, subject at all times to the inspection of the public.

To make oath to record.

Sec. 2. It shall be the duty of all butchers keeping a record as provided in section one of this act to make, or caused to be made, on or before the first day of each month, two exact and correct copies of the said record, as kept by him or them, and shall be and appear before the nearest acting justice of the peace or probate judge, as the case may be, within the county in which said butcher carries on and conducts his business, and shall make affidavit to the correctness of the said record, one copy or which shall be placed on file in the office of the nearest justice of the peace, and the other copy shall be sent by said butcher to the county clerk in said county and placed on file by the said clerk, and [be] subject, as other papers in his office, to the inspection of the public.

Disposition of record.

Penalty for violation.

Sec. 3. Any person who shall violate any of the provisions of this act, or shall fail, neglect, or refuse to comply with the requirements thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof, in a court of competent jurisdiction, shall be punished by fine [of] not less than one hundred dollars and not exceeding five hundred dollars, or by imprisonment in the county jail not less than three months, and not exceeding six months, at the discretion of the court. All money collected by virtue of the provisions of this act shall be paid into the general fund of the county for the benefit of the public schools in said county.

Approved February 20, 1879.

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CANADIAN AND ENGLISH MONEY.

AN ACT concerning the circulation of Canadian money in the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the provisions of section 181 of an act entitled, "An Act concerning crimes and punishments," approved January 12th, 1872, shall not be interpreted to include the passing of money which has been heretofore, or that shall hereafter be, put in circulation by authority of the Dominion of Canada or by authority of the Kingdom of Great Britain.

Passage of Canadian and English money legalized.

Approved January 27, 1879.

CLERKS OF DISTRICT COURTS.

AN ACT to provide compensation for the clerks of the district courts.

Be it enacted by the Legislative Asssembly of the Territory of Montana:

Section 1. That the clerks of the several judicial districts of this Territory shall, for each of said districts, be entitled to receive for their compensation for all services required of them by law as such, a salary of sixteen hundred and fifty dollars, payable quarterly out of the contingent fund of the county in which the United States district courts are held, to wit: The counties of Deer Lodge, Madison, and Lewis and Clarke, by warrants drawn on said fund and payable in their usual course as other warrants thereon are paid, and which salary shall be in full compensation for all such services as such clerks of said courts in said counties, and for all services in all civil and criminal causes, or in which any individual, county, or the Territory, or any officer thereof, may be a party, or in any way interested or liable for costs.

Salaries of clerks.

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Sec. 2. When such clerks may have a deputy in any other counties hereinafter named such deputies shall be entitled to receive, for their compensation for their services as deputy clerks of said courts in said counties, the following salaries, to-wit: In the county of Missoula five hundred dollars; in the county of Beaverhead, five hundred dollars; in the county of Jefferson, three hundred and fifty dollars; in the county of Gallatin, five hundred dollars; in the county of Custer, five hundred dollars; in the county of Meagher, two hundred and fifty dollars; and the county of Choteau, when courts are held therein, three hundred and fifty dollars, to be paid quarterly by warrants, drawn on the contingent fund of said counties, and paid as other warrants thereon, except in the county of Missoula, [where] such warrants shall be drawn on the current expense fund; and such salary shall be for the use and benefit of such deputies. And where such clerks shall have no deputy residing in any of said counties last named, such salary shall not be paid; and nothing in this act shall be so construed as to authorize any compensation for any deputy in said counties of Deer Lodge, Madison, or Lewis and Clarke. And it is provided that said salaries shall be in full payment for all services as clerks in said counties in all civil and criminal causes, or in which any individual, county, or the Territory or officer thereof, shall be a party or in any way liable for costs.

Of deputies.

Sec. 3. In addition to the salary of said clerks and deputies in the foregoing sections they shall be entitled to receive: For taking despositions, per folio, fifteen cents; for taking acknowledgments to conveyance, one dollar; for taking, filing, and recording declaration of intention to become a citizen, two dollars; for final naturalization papers, three dollars; for making transcript on appeal, where they exceed seventy-five folios, ten cents per folio for all in excess of seventy-five folios.

Fees allowed.

Sec. 4. That the fees and salaries in this act provided shall be all the compensation by law allowed such clerks

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and deputies for all services which they are required [to], or by law can, perform as such clerks; and any such clerk, or deputy, who shall receive any fee, or reward, or salary not specifically herein provided for, shall be liable to the county, Territory, or person paying the same for ten times the sum so paid to such clerk or deputy, to be recovered by civil action, and shall be found [deemed] guilty of a misdemeanor, and, on conviction, shall be fined in any sum of not less than one hundred nor more than five hundred, dollars and shall be imprisoned in the county jail for a term of not less than thirty nor more than ninety days.

Other compensation prohibited.

Sec. 5. That upon the commencement of any civil action in the district court, a plaintiff, not prosecuting *in forma pauperis*, shall deposit with the clerk of the court, or his deputy, the sum of seven dollars and fifty cents, and take his receipt therefor, which he shall file with the transcript [treasurer] of the county in which such complaint is filed, and before the rendition of final judgment in the action in his, or their, favor, such plaintiff, or plaintiffs, shall so deposit the further sum of two dollars and fifty cents, and take and file the receipt therefor as aforesaid; and the defendant, or defendants, upon entering his, or their, appearance in such action, unless defending *in forma pauperis*, shall pay the sum of two dollars and fifty cents to the said clerk, and take and file the receipt therefor as aforesaid; and before judgment shall be rendered therein in favor of the defendants, he, or they, shall further pay the sum of seven dollars and fifty cents to such clerk, and take and file the said receipt as aforesaid; and no party not having paid the said several sums as required shall be permitted, after such failure, to file further papers, or require the issuance of any process, until such payment has been made; but such prepayment shall not be required of any officer prosecuting for the people of the Territory, or any municipality thereof. The moneys so paid to the said clerks or their deputies shall be forthwith paid into the county

Deposit required of plaintiff and defendant in civil actions.

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treasury to the credit of the contingent fund thereof; except that, in the county of Missoula, it shall be credited to the current expense fund.

Sec. 6. Such sums so paid by said parties to such actions shall be taxed and recovered as other costs in the action.

Acts repealed.

Sec. 7. That all acts and parts of acts heretofore passed relating to the fees and compensation of clerks of said district courts be, and the same are hereby, repealed.

Sec. 8. This act shall take effect on the first day of March, 1879.

Approved February 21, 1879.

COMPENSATION LIMITED.

AN ACT limiting compensation in certain cases.

Be it enacted by the Legislative Assembly of the Territory of Montana:

When not paid.

Section 1. No Territorial officer shall be entitled to have or receive any salary whatever until the Legislative Council shall have advised and consented to his appointment, if said officer be appointed to fill a vacancy which existed at the close of a session of the Legislative Council.

[The foregoing act having been presented to the Governor of the Territory of Montana for his approval, was, on February 20th, 1879, returned by the Governor to the House of Representatives, in which it originated, without his approval and with his objections thereto. The objections were entered at large upon the journal of the House, the vote by which the bill was passed was reconsidered, and, on the question being put, "Shall this bill pass, the objections of the Governor to the contrary notwithstanding?" it was passed by a two-thirds vote of the House. The bill was then sent to the Council, together with the objections of the Governor. The vote by which the bill was passed was then immediately reconsidered, and upon the question, "Shall this bill pass, the objections of the Governor to the contrary notwithstanding?" it was passed by a two-thirds vote of the Council.]

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CONSOLIDATION OF OFFICES.

AN ACT to consolidate the county offices of Beaverhead and Custer counties.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. The sheriffs of the counties of Beaverhead and Custer shall be ex-officio the assessors of said counties, and shall perform the duties now required by law to be performed by assessors, and shall, before proceeding to assess any property, take and subscribe the oath of office now required to be taken by assessors; and in addition to his fees as sheriff shall be entitled to receive not less than one-half (½) and no more than three-fourths (¾) of one mill on the assessed value of all property returned by him, subject to all deductions made by the board of equalization.

Sheriffs ex-officio assessors.

Additional fees.

Sec. 2. That the probate judges of the said counties shall, by virtue of their said offices, be ex-officio county clerk and recorder, and, in addition to the duties of said office of probate judge, shall perform the duties of county clerk and recorder as prescribed by law; and shall, in addition to their fees as probate judge, receive the same fees as are by law allowed to said clerks and recorders for the services as such clerks and recorders; and before entering upon the discharge of their duties they shall, in addition to their bonds as probate judge, execute the same bond as is now required by law of said clerk and recorder, and take the same oath of office as is now required by such clerk and recorder: *Provided*, That no compensation shall be allowed the probate judge except the said fees now prescribed by law for the performance of the duties of probate judge and clerk and recorder.

Probate judge ex-officio clerk.

Sec. 3. The county treasurers of said counties shall be ex-officio superintendents of common schools of said counties, and shall perform the duties of such superintendents without other compensation than that allowed by law to county treasurers.

Treasurer ex-officio superintendent.

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Refusal shall vacate office.

Sec. 4. The refusal of any officer to act as assessor, or as county clerk and recorder, or as superintendent of common schools, shall vacate the office of sheriff, or probate judge, or treasurer, so refusing to act, which shall be filled as in other cases of vacancy.

Election.

Sec. 5. At the next general election to be holden in said counties, there shall be elected a sheriff who shall be ex-officio assessor, a probate judge who shall be ex-officio county clerk and recorder, and a treasurer who shall be ex-officio superintendent of common schools of said counties, respectively, who shall enter upon the duties of their respective offices as provided for in this act at the time, or times, now prescribed by law.

When to take effect.

Sec. 6. This act shall not effect the tenure of office of any officer now holding the office of county assessor, county clerk and recorder, or superintendent of schools, or with the discharge of their several duties; but they may proceed in the discharge of their duties and hold their said offices to the close of the terms for which they have been elected or appointed. Otherwise this act shall take effect from and after its passage.

Approved February 5, 1879.

CORPORATIONS.

AN ACT concerning corporations.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Method of electing trustees

Section 1. The trustees of every corporation heretofore, or hereafter, organized under the laws of this Territory providing for the formation of corporations for the conduct of any business for pecuniary profit, shall be chosen at one time, and on a general ticket. At such election for trustees, each stockholder shall have as many votes as the number of shares of stock held by him multiplied by the number of trustees to be chosen, and may

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cast all his votes for one candidate, or distribute them as he may see fit, and the persons having the greatest number of votes shall be trustees; and section five, of chapter XVIII, of "An Act revising, re-enacting and codifying the general and permanent laws of Montana Territory," approved January 12th, 1872, is hereby amended accordingly.

Approved February 21, 1879.

CORRECTING REFERENCES.

AN ACT to correct errors in references to sections of the code of civil procedure.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the following errors in referring to sections in "An Act to provide a code of civil procedure in the Territory of Montana," approved February 16th, 1877, be amended and corrected as follows: References corrected.

In section 163 of said act, strike out the figures "126" and insert in lieu thereof the figures 168. In section 181 of said act, strike out the figures "137" and insert in lieu thereof the figures 179. In section 184 of said act, strike out the figures "155" and insert in lieu thereof the figures 182.

Approved February 19, 1879.

CRIMES AND PUNISHMENTS,

AN ACT to amend an act concerning crimes and punishments in Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. If any person or persons, shall steal, or, with intent to steal, shall take, carry, drive, lead, or

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entice away any mare, gelding, stallion, colt, foal or filley, mule or ass, ox, cow, bull, stag, heifer, steer or calf, being the property of another, of whatever value, he or they shall be deemed guilty of grand larceny, and being thereof convicted, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and be imprisoned not less than one year nor more than fourteen years, in the Territorial prison, and shall be liable to the person, or persons, whose property is so stolen, for the said property, or the value thereof, and any expenses by him, or them, incurred in endeavoring to make reclamation thereof.

Theft of animals.

Sec. 2. Any person or persons, who shall buy any mare, gelding, stallion, colt, foal or filley, mule or ass, ox, cow, bull, stag, heifer, steer or calf, that shall have been stolen, knowing the same to have been stolen, or any person, or persons, who shall conceal or receive, any mare, gelding, stallion, colt, foal or filley, mule or ass, ox, cow, bull, stag, heifer, steer or calf, knowing the same to have been stolen, with intent thereby to defraud the owner; or if any person shall conceal any horse- or cattle-thief, knowing him to be such, with intent to prevent his detection or arrest, every person so offending shall be deemed guilty of concealing a felony, and being thereof convicted, shall be punished by a fine of not less than fifty nor more than three hundred dollars, and be imprisoned not less than one year nor more than five years in the Territorial prison.

Purchase or concealment of stolen animals, or aiding thief.

Sec. 3. That so much of section 72 and section 73 of an act defining crimes and providing penalties therefor, approved January 12th, 1872, as applies to the property in this act mentioned, shall, as to all offenses hereafter committed, be, and the same is hereby, repealed.

Acts repealed.

Approved February 19, 1879.

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DISEASED ANIMALS.

AN ACT concerning diseased animals.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the owner or owners of, or the person or persons in charge of, any sheep in the Territory of Montana, or which may hereafter be brought or raised within the Territory, which are now, or shall hereafter be, affected with the scab, or any infectious or contagious disease, shall keep the said sheep securely within some inclosure, or shall herd them at a distance of not less than six miles from all farms, corrals, sheds, or other established headquarters, where sheep are kept or are being herded: *Provided*, That any person or persons owning sheep affected with the scab, or any infectious or contagious disease, who have, prior to the passage of this act, established headquarters, shall be allowed to range such sheep upon the public domain within six miles in any direction of such established headquarters: *Provided*, They be not allowed to range within three miles of any other headquarters, unless the other headquarters be less than six miles distant, in which case such sheep shall not be herded nearer to the other headquarters than a distance equal to one-half the distance between the two headquarters.. Prescribing range of diseased sheep.

Sec. 2. It shall be unlawful for any person or persons owning sheep affected with the scab, or any infectious or contagious disease, to drive, or permit the same to be driven, upon any public highway, or within the distance of one mile of any such highway, or within six miles of any farm, corral, shed, or other established headquarters, where sheep are kept or are being herded. Where they shall not be driven.

Sec. 3. It shall be unlawful, after March 1st, A. D. 1881, for any owner or owners of sheep affected with the scab, or any contagious or infectious disease, to drive, or cause to be driven, or permit such sheep to range a Lessening range.

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greater distance than two miles from his, or their, headquarters.

Sec. 4. Any person owning sheep, or any one in his employ, shall have the right to examine any band of sheep that shall be driven within six miles of his headquarters, and any person or persons in charge of such sheep shall stop [them] and allow them to be examined, and shall render the necessary assistance in catching and examining them. If the person so in charge of such sheep refuse to render the assistance as above required, he shall be punished as is provided for a violation of the provisions of section two of this act.

May be examined.

Sec. 5. Any person who shall carry, or drive, or cause to be carried or driven, one or more sheep affected with the scab, or any infectious or contagious disease, into a herd of sheep belonging to another person, or shall carry, or caused to be carried, the "parasite" which causes such scab, or disease, and place it where another person is corraling or herding sheep, so that such sheep may become affected thereby, shall be adjudged guilty of a felony, and, upon conviction thereof, shall be confined in the Territorial prison not less than five years nor more than ten years, and be fined in any sum not less than one thousand dollars.

Conveying disease.

Sec. 6. Any person who shall be convicted of the violation of the provisions of either sections one, two, or three of this act, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than three hundred nor more than six hundred dollars.

Penalties.

Sec. 7. Any person violating any of the provisions of this act shall be liable in damages to any person or persons injured thereby, directly, or indirectly, to be recovered in a civil action in any court of competent jurisdiction.

Sec. 8. One-half of the fine imposed in any action prosecuted under the provisions of this act shall be paid to the owner of the sheep who shall have, either personally or by his employe, prosecuted the action by inform-

Fines; how disposed of.

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ing upon the defendant in said action, and the other part thereof shall be paid into the county treasury for the benefit of the school district of the county where said offense was committed.

Sec. 9. That in all civil actions under the provisions of this act for the recovery of damages, or of any penalty for a violation of any of its provisions, the plaintiff in such action shall be entitled to an attachment against the property of the defendant to secure the payment of any judgment that the plaintiff may recover, and the provisions of the civil practice act of this Territory in relation to attachments, as to the method of obtaining the same, shall be applicable thereto, and that all attachments proceeding under the provisions of this act shall be governed by the provisions of said practice act, except that the affidavit for the attachment shall only state that the plaintiff has been damaged by the sheep of the defendant, stating the amount of damages sustained. The undertaking for the attachment need only be executed in the same claimed as damages.

Procedure in civil action.

Sec. 10. In any criminal action begun under the provisions of this act, the sheriff shall take into his possession, and safely keep, the sheep of the defendant, and hold the same until the termination of the action, as security for the payment of any fine, or penalty, that may be inflicted, unless the defendant shall deliver to the sheriff an undertaking with at least two sufficient sureties in the penal sum of six hundred dollars, conditioned that the defendant will pay all fines, or costs, which may be adjudged against him upon the final determination of the action.

In criminal action.

Sec. 11. Sections two and three of "An Act in relation to diseased animals," approved February 11, 1876, is hereby repealed.

Sections repealed.

Approved February 21, 1879.

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ESCHEATED ESTATES.

AN ACT to amend sections 535 and 555 of the act relating to probate courts and estates of deceased persons, approved February 9th, 1877.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section 535 of said act be amended so as to read as follows:

"Sec. 535. If the decedent leave no husband, wife, or kindred, the estate escheats to the Territory."

Sec. 2. That section 555 of said act be so amended as to read as follows:

Sections of probate act amended.

"Sec. 555. When so claimed, the evidence, and the joint order of the auditor and treasurer, must be filed by the treasurer as his voucher, and the property delivered, or the proceeds paid, to the claimant on filing his receipt therefor. If no one succeeds to the estate or proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the Territory, and is placed by the Territorial treasurer to the credit of the general fund."

Sec. 3. That sections 535 and 555 of said act are hereby repealed.

Sec. 4. This act shall be in force from and after its passage.

Approved February 13, 1879.

HOMESTEADS ENLARGED.

AN ACT to enlarge homesteads.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section three hundred and eleven (311) of an act entitled "An Act to provide a code of civil procedure in the Territory of Montana," approved February 16, 1877, is hereby amended as follows:

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Sec. 311. A homestead consisting of any quantity of land not exceeding one hundred and sixty acres, used for agricultural purposes, and the dwelling house thereon, and its appurtenances to be selected by the owner thereof, and not included in any town plat, city or village; or instead thereof, at the option of the owner, a quantity of land not exceeding in amount one-fourth of an acre, being within a town plat, city or village, and the dwelling house thereon, and its appurtenances, owned and occupied by any resident of this Territory, shall not be subject to forced sale on execution, or any other final process from a court: *Provided*, Such homestead shall not exceed in value the sum of two thousand five hundred dollars.

Exemption from final process.

Approved February 15, 1879.

INCORPORATIONS.

AN ACT to provide for the incorporation of religious, benevolent, and other associations.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. Associations for the purpose of establishing and conducting churches, lyceums, libraries, lodges of free and accepted Masons, Odd Fellows, Good Templars, granges of Patrons of Husbandry, and all other associations, societies, and orders of like character, agricultural societies, stockgrowers' associations, and other associations and institutions of a like character, may become incorporated upon complying with the provisions of this act.

What associations may incorporate under this act.

Sec. 2. It shall be lawful for any such association, at a regular meeting thereof, or at a special meeting for that purpose called, to adopt, by a vote of two-thirds of the members thereof then present, a resolution to the following effect: *Resolved*, That the trustees of this (*lodge, or other association, as the case may be*), to-wit: (*A*,

Resolution to be adopted.

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B, C, D, &c., giving the names of the duly elected trustees), be, and are hereby, authorized to incorporate this (*lodge, or as the case may be*), and for that purpose to file with the proper officer such certificate as is required by law; and said trustees shall conduct the affairs of the corporation so formed until (*date at which, by the laws of such association, the next annual election of the trustees thereof occurs*).

Trustees to make and have recorded a certificate.

Sec. 3. The trustees, of whom there shall not be less than three, nor more than nine, named in such resolution, may thereupon make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this Territory, and have recorded in the office of the recorder of the county in which the affairs of such association are to be conducted, or, if such association shall be a grand lodge or other body having associations subordinate to it in several counties, then, in the office of the Secretary of the Territory, a certificate in which shall be stated the name, or title, by which the association shall be known, the particular business or objects of the association, the number of trustees to conduct the same, and the time of the annual election of such trustees; and shall attach to such certificate a copy of the resolution required by section two of this act, which copy shall be certified by the presiding and recording officers and the seal of such association.

Resolution to be attached.

Powers acquired.

Sec. 4. Upon filing for record such certificate, such association shall become a body politic and corporate, with power to sue and be sued by its corporate name, to have and use a common seal, which may be altered at pleasure, to establish a constitution and by-laws, and make all such rules [and] regulations as may be deemed expedient for admission to membership therein, and the termination of such membership, and for the management of its affairs, in accordance with law; to take by purchase, gift, grant, or devise, and hold and use personal property, and so much real estate as may be necessary or convenient to carry out the objects for which it

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was formed, and to dispose of such property: *Provided*, That the period of existence of such corporation shall not exceed twenty years. Limitation of duration.

Sec. 5. Any two or more lodges or other associations may elect, each, not exceeding three of its members with authority to form a corporation for erecting a building, or buildings, and managing, and holding the legal title to, real estate for the use of, and in trust for, such associations according to their respective interests in such property. Such persons shall thereupon file a certificate, as near as may be to the like effect as that provided for in section three of this act, in the office of the county recorder of the county in which the affairs of such corporation are to be conducted, attaching to such certificate a transcript of the record of their election, certified by the presiding and recording officers of their respective associations; and thereupon such persons and their successors in office shall become a body politic and corporate, with like powers as other corporations provided for in this act. May corporat for building pur poses.

Sec. 6. In case any such associations, whether incorporated or not, have, prior to the passage of this act, united together for the purpose of forming, or authorizing the formation of, a corporation similar in its character to those authorized by section five of this act, and the members elected or authorized for that purpose have incorporated, or attempted to incorporate, themselves and have filed a certificate of such incorporation, such incorporation shall be deemed and held to be as valid, to all intents and purposes, as if the same had been formed after the passage of this act; and if the certificate so filed is not deemed sufficient, such incorporators may file such additional certificate as may be necessary to comply substantially with the provisions of this act; and the title to any property which may have been conveyed to such corporation shall be vested therein according to the true intent and purpose for which the same was originally conveyed. Retroactive provisions.

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Act repealed.

Sec. 7. That the act entitled "An Act to provide for the formation of corporations other than those for pecuniary profit," approved February 9, 1876, be, and the same is hereby, repealed: *Provided*, That such repeal shall not affect any incorporation formed under said act prior to the passage of this act.

Sec. 8. This act shall take effect and be in force from and after its passage.

Approved February 21, 1879.

IRRIGATION AND WATER RIGHTS.

AN ACT to amend an Act in relation to irrigation and water rights.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section amended.

Section 1. That section first, of chapter thirty-four, of "An Act revising, re-enacting and codifying the general and permanent laws of Montana Territory," approved January 12, 1872, be amended by adding the following to said section, to-wit:

Prior appropriators to return surplus water to stream.

Provided, That in all cases where, by virtue of prior appropriation, any person may have diverted all the water of any stream, or to such an extent that there shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream for such purpose of irrigation, and there shall at any time be a surplus of such water so diverted, over and above what is actually used for such purpose by such prior appropriator, such person shall be required to turn and cause to flow back into such stream, such surplus water, and upon failure so to do, within five days after demand being made upon him in writing by any person having a right to the use of such surplus water, such person, so diverting the same, shall be liable to the person aggrieved thereby in the sum of twenty-five dollars for each and every day such water shall be withheld

Demand, how made.

Penalty.

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after such notice; to be recovered by civil action by any person having a right to the use of such surplus water.

Approved February 21, 1879.

INSANE CONVICTS.

AN ACT in relation to insane convicts.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. Whenever it shall appear that a Territorial convict, who is serving a term of imprisonment in the United States penitentiary at Deer Lodge, or other prisons where Territorial convicts are confined, is insane, the warden, or other officer in charge of such penitentiary or prison, shall certify the fact to the probate judge of the county in which such penitentiary or prison is located. The said judge shall thereupon cause the said convict to be brought before him, at such time and place as he may direct, and the said judge shall, also, cause to appear, at the same time and place, a jury of three citizens of his county, one of whom shall be a licensed practicing physician, who shall proceed to examine the person said to be insane; and, if such jury, after careful examination, shall certify, upon oath, that the charge is correct, such judge shall make out duplicate warrants reciting such facts, and place them in the hands of the sheriff of said county, who shall immediately, in compliance therewith, convey the person therein named and deliver him to the contractor for the custody, maintenance and treatment of insane persons, at the place designated; and such contractor shall acknowledge, by endorsement in writing upon each of said warrants, the delivery of such persons therein described to him, and the date thereof; and such sheriff shall return one of said warrants to the officer issuing the same, and forward

How insanity determined.

Removal to asylum.

Receipt to be given.

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the other to the Governor of the Territory, who shall file and preserve the same.

Sec. 2. If, at any time during the period for which such convict was sentenced, it shall appear to such contractor that he is restored to reason, and is of sound mind, he shall notify the sheriff of the county in which such penitentiary or prison is located, who shall thereupon convey and deliver him to the warden, or other officer in charge, of such penitentiary or prison, and such convict shall be confined for the remainder of the term for which he was sentenced.

Procedure if restored to reason.

Sec. 3. For the services required by this act, the probate judge and sheriff shall receive the fees that are provided by sections 16 and 17 of chapter 31 of the Laws of Montana, approved January 12th, 1872.

Fees.

Approved February 21, 1879.

INSURANCE COMPANIES AND AGENTS.

AN ACT concerning fire insurance companies and agents.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That it shall be unlawful for any fire insurance association, company, corporation or partnership, incorporated by, or under, or organized pursuant to, the laws of any foreign government, State, or Territory of the United States, other than the Territory of Montana, directly or indirectly, to take any risks or transact any business of fire insurance in this Territory, unless possessed of an actual capital of two hundred thousand dollars; and any such company, association or corporation, desiring to transact any business as aforesaid in, or relating to the property of, this Territory, by agent or agents, within this Territory, or otherwise, shall first appoint an agent or attorney within this Territory, who shall be [a] resident, or residents, thereof, on whom

Minimum limit of capital.

Resident agent required.

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process of law can be served; which appointment shall be in writing and under the seal of such company or corporation, and shall fully authorize such person to appear as the agent, or attorney, of such company, or corporation, in all suits commenced against such company, or corporation, in this Territory, until another agent, or attorney, shall be appointed for that purpose, which written instrument shall be filed in the office of [the] Auditor of this Territory, and by him recorded and preserved; and when so filed such appointment shall continue until another agent, or attorney, shall be substituted as aforesaid; and any process issued by virtue of the laws of this Territory, from any court in this Territory, and served upon such agent, or attorney, by the proper officer, authorized to serve such process, shall be deemed a sufficient and personal service upon such company, or corporation, and shall bind the same to all intents and purposes as though served upon the officers of said company in this Territory; but such service may be made in any other manner provided by law.

Written appointment; where filed.

Service of process.

Sec. 2. And every such company, association, or corporation, shall file a certified copy of their act of incorporation, articles of association, charter, or deed of settlement, together with a statement under the oath of the president, secretary, a trustee or manager of such company, or corporation, with the auditor of the Territory, which statement shall state the name of the company, or corporation, the place where located, the amount of its capital, with a detailed statement of its assets, encumbrances and liabilities, including all claims against the company; also a copy of the last annual report of the company, or corporation, which statement shall, after the first year, be renewed annually on or before the first day of January of each year; and no insurance agent in this Territory shall, after the first day of August, 1879, transact any insurance business within this Territory, for or on behalf of any insurance [company or corporation] who shall not have complied with the pro-

Certified copy, etc., to be filed before Aug. 1st, 1879.

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visions of this act, and received a certificate from the auditor of this Territory, as hereinafter provided.

Sec 3. It shall not be lawful for any agent for any such company to transact any business until he shall first procure a certificate from the auditor of the Territory, stating that such company has complied with this act applying to such company, that the said company is solvent, as appears from the evidence in his office, [and] the name of the attorney appointed by the company, for which certificate the auditor may receive one dollar for the use of the Territory.

Certificate from Auditor

Sec. 4. Every fire insurance company, before transacting any fire insurance business within this Territory, or soliciting or taking any risk, or effecting or issuing any policy, upon any property in this Territory, from and after May the first, 1879, shall procure a license to transact such business from the treasurer of the county in which its business shall be carried on, and pay therefor at the rate of seven dollars and fifty cents per quarter, or forty dollars per annum; and all moneys received for such licenses shall be applied to the maintenance of the fire department of the town or city where such business shall be carried on, if there shall be such fire department there established; if not, then such moneys shall go [to] the general fund of such county.

License, from whom procured.

License money to fire department.

Sec. 5. Any violation of any provisions of this act shall subject the person violating the same to a penalty of five hundred dollars, to be recovered in a civil action, for the benefit of the Territory of Montana, from any person violating any provisions thereof.

Penalty.

Sec. 6. All acts, and parts of acts, in conflict with this act are hereby repealed.

Repeal.

Approved February 21, 1879.

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JUSTICES—MILEAGE.

AN ACT to provide for the payment of certain expenses.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That whenever a court is appointed by the supreme court of the Territory, or the justices thereof, or a majority of them, to be holden in any county of either of the districts of the Territory where causes are not heard which arise under the constitution and laws of the United States, and in which the justice assigned to said district does not reside, it shall be the duty of the board of county commissioners of such county, in which such term is appointed to be held, to pay to the chief justice, or associate justice, so holding said term, mileage, at the rate of twenty cents per mile, in going from his residence to the place where said court is held, and returning therefrom, as his expenses incurred for, and on account of, travel incurred for the benefit of such county, and to cause to be issued to such chief justice, or associate justice, then presiding, a warrant for said amount, to be drawn on the general fund of said county.

Justices to receive mileage from certain counties.

Sec. 2. Whenever a term of the district court shall be held in any county in this Territory, and another county is attached to such county for judicial purposes, at the close of each term it shall be the duty of the justice presiding at such term to make an inquiry as to what share of the public expense of such term was incurred for, and on account of, the county or counties so attached, or litigants therefrom, and to apportion the same, and to make an order directing the reimbursement to the county incurring such expense, by the county so attached; and it shall be the duty of the board of county commissioners of the attached county to draw their warrants on the treasurer of their county, out of their general fund, payable to the county commissioners of the county incurring said expense, and to forward the same to the treasurer of the county, who shall make

Counties attached for judicial purposes to pay their portion of expenses

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report thereof to the board of county commissioners of his county, so soon as the same shall be received; and the said warrants shall be paid in due course as is provided by law; and the said district court is authorized to make any and all necessary orders for carrying this section into effect as equality and justice may require.

Approved February 21, 1879.

MARKS AND BRANDS.

AN ACT to provide for printing marks and brands.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. After the first day of April, A. D. 1879, it shall be the duty of the Territorial Treasurer to cause to be printed, at the expense of the Territory, one thousand copies of a complete list of all marks and brands of record in his office, arranged in alphabetical order, in pamphlet form, which may be on file in his office on the said first day of April, A. D. 1879.

Treasurer to publish list.

Sec. 2. The treasurer, so soon as the said pamphlets shall be printed, shall furnish the county clerks of each county with fifty copies of the same. The county clerks shall receive said copies, and sell the same to any person applying therefor at the rate of one dollar per copy and account to, and pay over to, the said treasurer, every three months, for the money received therefor. When any county clerk shall have sold and accounted for the first fifty copies furnished, he may apply to, and receive from the treasurer an additional fifty copies, until the whole of the thousand copies are exhausted.

How disposed of and accounted for.

Sec. 3. The auditor shall draw his warrant upon the treasurer for the amount of the expenditure incurred by the printing, as herein provided for, upon receiving a bill from the party performing the work, duly certified as correct by the Governor.

Expenses, how paid.

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Sec 4. The treasurer is hereby authorized to expend the sum of sixty dollars, or so much thereof as may be necessary, in procuring engrossed [engraved] copies of the brands placed on record, for publication, and said copies shall remain the property of the Territory, to be used in printing said marks and brands, and the auditor is authorized to issue his warrant for the amount so expended, not to exceed the sum of sixty dollars.

Engraved brands.

Sec. 5. The recorder of marks and brands shall not record any two like brands, if upon the same place on the animal.

Shall not record.

Approved February 21, 1879.

NOTARIES PUBLIC—OATHS.

AN ACT in relation to notaries public.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the governor, secretary, chief justice, or any associate justice, of the Territory, or the clerk, or deputy clerk, of any district court, under his hand and the seal of said court, or the county clerk and recorder, or his deputy, under his hand and seal of the county, or the clerk of the supreme court, are hereby authorized to administer oaths of office to notaries public; and all oaths of office heretofore administered to notaries public by an officer of the Territory authorized to administer oaths, or any officer of any county, or other municipality therein, is hereby declared valid to all intents and purposes whatsoever.

Who may administer oaths to notaries.

Approved February 13, 1879.

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OFFICERS—DUTIES AND PENALTIES.

AN ACT prescribing the duties of certain officers, and prescribing a penalty for non-performance of their duties.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That any district, county, or township officer, whether elected or appointed to such office, who shall fail, or refuse, to perform any duty by law required of him as such officer, shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than fifty nor more than one hundred dollars, and shall be imprisoned in the county jail for a term not more than ninety days, and, upon such conviction, shall not receive any fee whatever for the performance of the duties of his office; and the boards of the commissioners of the several counties are prohibited from auditing or paying such officer any fee, salary, or compensation whatever.

Penalty for non-performance of duties.

Approved February 21, 1879.

QUAILS.

AN ACT to protect quail in the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. For the next six years after the passage of this act, it shall be unlawful for any person or persons to wilfully kill, or destroy, or caused to be killed, or destroyed, in any manner whatever, any quail which are, or may hereafter be, brought, or raised, in this Territory, and upon conviction thereof, any person or persons so convicted shall be fined in any sum not less than five dollars, nor more than twenty-five dollars, for each offense committed.

Destruction of quail unlawful.

Sec. 2. That the possession of the dead bodies, or any part thereof, of the birds mentioned in this act, by any person or persons, shall be taken as prima facie evi-

Prima facie evidence.

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dence that such person or persons are guilty of killing the same.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 21, 1879.

RECORDS OF DISTRICT COURTS.

AN ACT to provide for keeping the records of the district courts at county seats of the counties where such courts may be held.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. It is hereby made the duty of the clerk of each judicial district of this Territory to appoint a deputy clerk for each county of such judicial district, where courts are held outside of the county in which such clerk may reside, which deputy shall qualify and give bond as now provided by law.

Deputy clerks to be appointed.

Sec. 2. It shall be the duty of each deputy clerk of the district court to keep a full and complete record of the proceedings of such district court, in an office to be provided by the county commissioners, at the county seat of the county where such court may be held, in the form and manner provided by law for the keeping of such records and proceedings, which records and all other books and papers required by law to be kept in the office of the clerk of the district court, shall be open for the examination of any person during the usual business hours of each day, Sundays and legal holidays excepted.

Deputy clerks to keep records at the county seats.

Sec. 3. Every clerk of the district court in this Territory, who shall fail, or refuse, to appoint a deputy clerk for each county as herein provided, shall be deemed guilty of a misdemeanor, and be fined in any court of competent jurisdiction, in any sum not less than five hundred dollars, nor more than one thousand dollars.

Penalty for not appointing.

Approved February 19, 1879.

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AN ACT to amend an act providing for the collection of revenue.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section amended.

Section 1. That section thirty-one (31) of an act entitled, "An Act providing for the collection of revenue," approved January 12, 1872, is hereby amended as follows:

Sale of lands for delinquent taxes.

Sec. 31. On or before the third Monday of January, in each year, the treasurer is directed to offer at public sale, at the court house in his county, all lands on which the taxes levied the preceding, or any previous, year still remain unpaid; but such sale shall not be void if not made till after the day named.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved February 19, 1879.

REVENUE—REPEAL.

AN ACT to repeal section 6 of an act entitled, "An Act to provide for the collection of revenue," approved January 12th, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section repealed.

Section 1. That section 6 of an act entitled "An act to provide for the collection of revenue," approved January 12th, 1872, be, and the same is hereby, repealed.

Approved February 19, 1879.

SCHOOL MONEY APPORTIONMENT.

AN ACT to amend section 48 of the Montana school law.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. All school moneys apportioned by county superintendents of common schools shall be apportioned

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to the several districts in proportion to the number of school census children between four and twenty-one years of age, as shown by the returns of the district clerk for the next preceding school census: *Provided*, That Indian children, who are not living under the guardianship of white persons, shall not be included in the apportionment list.

School money, how apportioned.

Sec. 2. That section 48 of "An act to provide a system of common schools," approved February 13, 1874, be, and the same is hereby, repealed.

Section repealed.

Approved February 21, 1879.

SUGAR FACTORY OR REFINERY.

AN ACT to encourage the manufacture of sugar in the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. The first factory or refinery for the manufacture or refining of sugar, from beet roots, or other products of the soil of Montana Territory, erected and operated in the Territory of Montana, of proper construction and sufficient capacity for the production of sugar, shall be exempt from all taxation for the term of six years from the completion of such factory or refinery. The said factory or refinery shall be deemed completed at the time of manufacturing the first refined sugar.

Exemption from taxation for six years.

Sec. 2. The term factory or refinery used in this act is hereby defined to include and embrace the building, or buildings, land, or lands, connected therewith, not exceeding an area of 160 acres, together with all the presses, washing and grinding mills, boilers, evaporating pans, machinery, utensils, materials, and appurtenances used in or about the same, or in anywise necessarily connected therewith, and all water rights, ditches, flumes, water-wheels, engines, and reservoirs, and all stock, ma-

Exempted property defined

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terials, and products on hand unsold, whether the same be raw, manufactured, or refined.

Sec. 3. That any person, association of persons, or corporation, filing with the auditor of the Territory the first notice of his, their, or it's, intention to erect and operate a sugar factory or refinery within two years from the filing of said notice, shall have the term of six months from the time of filing the notice aforesaid, to complete arrangements and obtain the necessary machinery and apparatus for the erection of said factory or refinery; and at, or before, the expiration of the said six months, said person, association, or corporation, shall commence the erection of said factory or refinery, and shall prosecute the work thereupon with due diligence until the same shall be completed.

How acquired; work to commence.

Sec. 4. Any person, association, or corporation, that shall first file the notice provided for in section three of this act, and shall proceed to erect and complete said factory, or refinery, in manner provided therein, this act shall have the effect to give preference to such person, association, or corporation, under this act, for the term of six months after the filing of the aforesaid notice.

Preference given.

Approved February 21, 1879.

SWINE.

AN ACT in relation to swine.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That hereafter it shall be unlawful for any owner or owners of swine to permit the same to run at large, from the first day of March until the first day of November.

At large; when not to run.

Sec. 2. That the owner or owners of swine are hereby prohibited from letting the same run at large, at any season of the year, in any town or village, in this Terri-

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tory, with a population of over ten (10) inhabitants; and any swine so found running at large, in any such town or village, shall, upon complaint being made by any citizen, be seized by the sheriff, or any constable of the county, and sold in the same manner as now provided by law for the sale of personal property on execution, and the proceeds thereof shall be paid into the common school fund of the county.

To be seized and sold.

Sec. 3. Any person or persons violating the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of ten (10) dollars for the first offense, and in an additional sum of twenty (20) dollars for each subsequent offense, and shall be liable in damage to any party injured thereby, to be recovered in any court having competent jurisdiction: *Provided*, That nothing in this act shall be so construed as to apply to any portion of the county of Missoula, except the towns and villages therein.

Penalty.

Exception.

Sec. 4. That all fines collected under the provisions of this act, shall be paid into the county treasury for the use and benefit of the common schools of said county.

Fines.

Approved February 13, 1879.

TAXATION—NET PROCEEDS OF MINES.

AN ACT to provide for the taxation of the proceeds of mines.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That every person, corporation, or association engaged in mining upon any quartz vein or lode, or placer mining claim, containing gold, silver, copper or lead, is hereby required, between the first and tenth days of August in each year, to make out a statement of the gross yield of the above named metals from each of such mine or mines being owned or worked by such person,

Statement on oath to be made of gross yield; when.

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corporation, or association during the year next preceding the first day of August in each year, and the value thereof, which said statement shall be verified by the oath of such person, or the superintendent or managing agent of such corporation or association, and deliver the same to the assessor of the county in which such mine or mines are situated, between the dates above mentioned. That said statement, verified as above provided, shall also contain a true and correct amount of the actual expenditures of money and labor in and about extracting such ore, the reduction thereof, and the conversion of the bullion derived therefrom into money or its equivalent during such year.

Also of expenses.

Sec. 2. That in making the statement of the expenditures mentioned in the foregoing section, such person, corporation, or association, shall be allowed to include therein all sums of money that have been expended for necessary labor, machinery, supplies of every kind and character needed and used in his or its mining operations, for improvements actually necessary in and about the working of such mine or mines, reducing the ores therefrom, and expended in and about the construction of mills or reduction works used and operated in connection with said mine or mines, for the purpose of reducing and extracting the precious metals therefrom, and shall not include any money invested in said mines or improvements made on the same during any year except the year immediately preceding such statement: *Provided*, That nothing herein contained shall exempt such improvements, mills, reduction works and supplies from taxation as now provided by law: *Provided*, That the expenditures referred to herein shall not include the salaries, or any portion thereof, of the officers of any corporation not actually engaged in the working of such mine or mines, or personally superintending the management thereof.

What expenditures admissable.

Proviso against exemption.

Sec. 3. That a tax shall be levied annually upon the net proceeds of all mines above named, such net pro-

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ceeds to be ascertained and determined in the manner provided in the foregoing sections of this act, and that such tax shall be collected and the payment thereof enforced as now provided by law for the collection of other taxes. Tax on net proceeds.

Sec 4. That if any person, corporation or association engaged in the kind of mining named in this act, shall refuse or neglect to make and deliver to the assessor of the county where his or their mines are situated, the statement mentioned in the first and second sections of this act, during the time herein specified, the assessor of such county is hereby authorized and empowered, and it is hereby made his duty, to proceed to fix and assess, according to his best knowledge and information, the amount upon which the tax mentioned in section three of this act shall be levied, in the manner now provided by law relating to the assessment of other property, and shall add a like penalty of twenty per centum to the amount and value thereof. Statement; assessor's duties if not made.

Sec. 5. That from and after the passage of this act, no direct tax shall be levied upon any placer claim, quartz lead, or lode, except to the extent of the price paid for any mining claim in obtaining patent therefor from the government of the United States, and the only taxation of the proceeds thereof shall be that provided in this act: *Provided*, That this act shall not be so construed as to exempt from taxation improvements consisting of buildings, erections, or machinery placed upon any quartz lead or lode, or used in connection therewith: *Provided further*, That the assessor shall, at the time of assessing any person, firm, corporation or association, have the power to examine the books and accounts of said person, firm, corporation or association, to fully satisfy said assessor that he has been furnished with a truthful report; and if satisfied from such examination that the report is false, he shall assess the same at the true amount of the net proceeds, so near as he can arrive at the same: *Provided*, That no one, by virtue of Limitation of tax. Proviso. Assessor may examine books.

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Proviso. the provisions of this act, shall be deprived of his right to appear before the proper board of equalization as other taxpayers under existing laws.

Approved February 21, 1879.

TERRITORIAL CONVICTS.

AN ACT to authorize the Governor to contract for the keeping and maintenance of the Territorial convicts in the United States penitentiary at Deer Lodge.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the governor of the Territory is hereby authorized and directed to enter into, make, and execute, on behalf of and in the name of the Territory, upon such terms as he shall think best, a contract with the authorities of the United States for the keeping, clothing, and maintenance in the United States penitentiary at Deer Lodge, for a term of years not to extend beyond the first day of August, 1881, of all persons sentenced to confinement in the Territorial penitentiary for offenses against the laws of the Territory: *Provided*, That the amount contracted to be paid by the Territory shall not exceed the sum of one dollar per day, for keeping, clothing, and maintaining each convict; and within ninety days before the time when such contract shall expire, the governor may renew the same, on terms alike advantageous to the Territory, for the further period of not exceeding two years, unless otherwise prohibited by law.

Territorial convicts; governor to contract for their maintenance.

Limitation of amount

Power to renew.

Sec. 2. All persons sentenced to imprisonment in the penitentiary under the laws of this Territory shall be confined in the United States penitentiary at Deer Lodge, in pursuance of the contract to be made as above provided.

Where convicts shall be kept.

Sec. 3. It shall be the duty of the warden, or the officer of the United States in charge, of the penitentiary,

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to make out and deliver to the governor an account of the money due from the Territory, specifying the name of each Territorial prisoner, and the length of time the Territory is charged for such prisoner, and shall certify that such amount is correct, and that the prisoners charged for have been kept in the penitentiary during all the time charged for them respectively, which account shall be examined by the governor, and, if he is satisfied that the same is correct, he shall so certify, and, upon presentation to and filing with the Territorial auditor of such account and certificate, said auditor shall proceed to provide for the payment of said account as provided in section 4 of this act.

Warden; how to render accounts.

Account: how audited.

Sec. 4. That the Territorial auditor is hereby required to issue Territorial warrants for such amounts as may be necessary to pay for the maintenance, clothing, and keeping and, in case of death, the necessary expenses of burial of such convicts, and the governor and auditor are authorized and required to sell the same at the highest price that can be obtained therefor, and apply the proceeds of such sale to the payment of all sums due, or that may become due, the United States under the provisions of this act: *Provided*, It shall be the duty of the Territorial auditor, previous to selling said Territorial warrants, to cause to be published in a newspaper published at the seat of government of this Territory, at least four consecutive weeks before such sale, a notice thereof specifying the amounts of warrants to be sold, and the time and place of such sale.

Sale of warrants to pay contractor.

Notice of sale to be published.

Sec. 5. The governor is hereby authorized to make such contract as he shall think advantageous to the Territory, for the hire or labor of the Territorial convicts for the period of not exceeding two years, and to apply the proceeds of the labor of such prisoners in payment of the amount due the United States for the keeping, clothing, and maintenance of such prisoners: *Provided*, That the governor may make provision in such contract that the warden, or other officer of the United States

Governor may contract for prisoners to labor.

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having charge and control of said Territorial prison, may retain not to exceed 30 per cent. of such proceeds, as compensation for his services in keeping, and rendering, accounts of such labor, and accounting to the treasurer therefor.

Compensation to warden.

Sec. 6. Whenever any Territorial convict shall be discharged from imprisonment, and shall be destitute of proper and sufficient clothing, and of means to procure the same, the governor is hereby authorized and directed to provide proper and sufficient clothing for such prisoner, upon the certificate of the warden, or other officer in charge of the penitentiary, that the same is necessary: *Provided*, The cost of such clothing furnished any one prisoner shall not exceed fifteen dollars; and he shall also pay the additional sum of five dollars in money, and, upon the filing by the governor, in the office of the Territorial auditor, of the certificate of such warden, or other officer in charge, and of the governor, that such clothing was necessary, and has been furnished, the said auditor is authorized and directed to draw his warrant on the Territorial treasury for the amount so expended for clothing in favor of the governor, payable out of any money in the treasury not otherwise appropriated.

Indigent discharged convicts to have clothing.

And money.

Reimbursement.

Sec. 7. Whenever the word maintenance occurs in the preceding sections of this act, it is understood to mean support, in sickness as well as health, including all necessary medical attendance and care.

The word maintenance defined.

Approved February 20, 1879.

TERRITORIAL OFFICERS—REPORTS.

AN ACT requiring certain officers to report.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That on the first day of January of each year hereafter, it shall be the duty of the Territorial

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auditor to cause to be published not less than six hundred, nor more than one thousand, copies of the auditor's and treasurer's reports to the governor, for the preceding year, in pamphlet form. Auditor's and Treasurer's: number.

Sec. 2. Each county superintendent of common schools shall, on or before the fifteenth day of December of each year, report to the Territorial superintendent of public instruction the number of school census scholars between the ages of four and twenty-one years, and the number of children under the age of four years, for the current year, and the amount of school moneys collected from all sources for the fiscal year ending on the first day [of] December, instant. County Superintendents'.

Sec. 3. The Territorial superintendent of public instruction shall report annually—biennially to the Legislative Assembly, and on the first day of January, 1880, and on each alternate year thereafter to the governor—and such report shall contain an abstract of the supplemental reports of county superintendents required to be made by this act. Territorial Superintendent's.

Sec. 4. The Territorial superintendent of public instruction shall cause to be published not less than five hundred copies of said report, nor more than seven hundred copies, in pamphlet form. Number.

Sec. 5. The Territorial auditor shall draw his warrant on the Territorial treasurer in payment for the printing done under the provisions of this act, in accordance with the provisions of the printing law. Payment for printing.

Sec. 6. Any officer, required to report under the provisions of this act, who shall fail to report as the law directs, shall be deemed guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars, and not more than one hundred dollars, before any court having competent jurisdiction; the proceeds of said fines to be paid into the school fund of the county where such conviction shall be had. Penalty for not reporting.

Approved February 21, 1879.

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TOLL FOR GRINDING GRAIN.

AN ACT fixing the rate of toll for grinding grain.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Rate of toll.

Section 1. That the owner, or occupier, of any grist mill within this Territory shall be entitled to the one-sixth part of all the wheat, rye, or other grain ground and bolted, and to the one-eighth part of all rye, malt, buckwheat, corn, barley or peas ground or chopped, only.

Accountability for grain and sacks.

Sec. 2. That the owner, or occupier, of every mill aforesaid shall be accountable for the safe keeping of all grain received in said mill for the purpose of being ground therein, and shall deliver the same when ground, or ground and bolted, (as the case may be) with the bag or bags, sack or sacks, which were delivered in said mill with the grain, to the owner when called for: *Provided*, That the bag or bags, sack or sacks, left as aforesaid, be distinctly marked with the initials and surname of the owner or owners thereof: *Provided, also*, That nothing herein contained shall be so construed as to charge, or make accountable, any owner, or occupier, of any mill for the loss of any grain, bag or bags, sack or sacks, which shall happen by robbery, fire, or other accident without the fault or neglect of such owner or occupier, or that of any miller employed by such owner or occupier.

Provisos.

Penalties.

Sec. 3. That if the owner or occupier of any mill, their representative, agent or miller, shall take a greater proportionate quantity of toll than is hereinbefore authorized, and be duly convicted thereof, before any court having jurisdiction of the same, he, or they, shall be fined for every such offense in any sum not exceeding one hundred dollars, at the discretion of the court.

Sec. 4. This act shall take effect and be in force from and after the first day of April, 1879.

Approved February 21, 1879.

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TRANSPORTATION OF CONVICTS.

AN ACT to provide for the transportation of convicts from county jails to the penitentiary.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That all fees and expenses, as defined by law, accruing to the sheriff of any county in this Territory for transporting prisoners, convicted under the laws of this Territory, from the jail of any county to the Territorial prison, shall be paid by the Territory of Montana, and not by any county thereof, and the Territorial auditor is hereby directed to draw his warrant upon the Territorial treasurer in favor of the sheriff in payment of such fees and expenses, upon any sheriff filing with him his account therefor, which shall state the name of the prison [prisoner] transported, and the county jail from which he was transported, [and the distance necessarily traveled] by such sheriff in transporting such prisoner, which account shall be verified by the oath of such sheriff.

Transportation of certain convicts paid by Territory.

Sheriff's account.

Sec. 2. That all acts and parts of acts in conflict herewith be, and the same are hereby, repealed.

Repeal of act.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 21, 1879.

TRESPASS.

AN ACT to prevent the trespassing of animals upon private property.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That sections one and two of chapter IV. of "An Act revising, re-enacting and codifying the general and permanent laws of Montana Territory," approved January 12th, 1872, be amended so as to read as follows:

Act amended.

Section 1. If any horse, mule, jack, jenny, hog, sheep,

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or any kind of neat cattle, shall break into any ground enclosed by a lawful fence, the owner or manager of such animal shall be liable to the owner of such enclosed premises for all damages sustained by such trespass; and if the trespass be repeated by the neglect of the owner or manager of such animals, he, or she, or they, shall for the second or every subsequent offence or trespass be subject to double the damages of such trespass to the owner of said premises: *Provided*, The owner, or occupier, of such grounds or crops so damaged and so trespassed upon may take up, and safely keep, at the expense of the owner or owners thereof, after due notice to said owners of such animals, the said animals, or as many of them as may be necessary to cover the damages he may have sustained, for ten days; and before restitution shall be had by the owner or owners of such animals, all damages done by them, as well as the expense of posting and keeping them, shall be paid. Any justice of the peace in the township or precinct shall have jurisdiction of all such reclamation of animals, together with the damages, expenses of keeping, and posting the same, where the amount claimed does not exceed one hundred dollars.

Liability for trespass.

Person injured may take up animals.

Jurisdiction.

Sec. 2. If any owner, or occupier, of any grounds or crops trespassed upon by animals entering upon or breaking into his, or her, or their, enclosures, whether the same be enclosed by a lawful fence or not, shall maim, or materially injure, the animal or animals so tresspassing, he, she, or they, shall be liable to the owner or owners of such stock for all damages, and for the costs accruing from a suit for damages, when necessarily resorted to for their recovery.

Penalty for injuring animals

Sec. 3. When two or more persons shall cultivate lands under one enclosure, neither of them shall place, or cause to be placed, any animal on his, her, or their, ground to the injury or damage of the other, or others, but shall be liable for all damages thus sustained by the other, or others; and if repeated, after due notice is

Where jointly cultivating.

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given, and for every subsequent repetition, double damages, to be recovered in any court having jurisdiction.

Sec. 4. That chapter 4 of "An Act revising, re-enacting and codifying the general and permanent laws of Montana Territory," approved January 12th, 1872, concerning the tresspassing of animals on private property, be, and the same is hereby, repealed. Chapter repealed.

Approved February 19, 1879.

UNLAWFUL INTERFERENCE.

AN ACT to prevent unlawful interference with private rights and private property.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. Every person who by force, or fraud, or by threats, or intimidation, either by words, or writing, or actions, or exhibition of force, shall prevent, or interfere with, or hinder, or delay, any contractor, mechanic, laborer, workman, or employee, in the performance of any lawful contract, work, labor or employment, for any person or company, or upon any terms, or at any price, or wages, to which such contractor, mechanic, laborer, workman, or employee, may have agreed, or for which he may desire to work, or labor, or contract, shall be deemed guilty of felony, and on conviction thereof shall be punished by fine of not less than one hundred or more than five hundred dollars, or by imprisonment in the Territorial prison for a term of not less than one or more than three years, or by both such fine and imprisonment. Penalty for interfering with private rights.

Sec. 2. Every person who by force, or fraud, or by threats of injury to person or property, or intimidation, either by words, or writings, or actions, or exhibition of force, or otherwise, and without authority of law, shall prevent, or interfere with, or hinder, or delay, any person, company, or corporation, in the lawful use, or working, For interfering with private property.

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or enjoyment, or control, of any mining claim, mill, works, machinery, or other property, or in the lawful management, direction and control of any workman, or employee, of such person, company, or corporation, or in the working, or performance by such person, company, or corporation, of any lawful contract or agreement for hiring, or work, or labor, or other services, shall be guilty of a felony, and on conviction shall be punished as prescribed in section 1 of this act.

Sec. 3. Every person who shall knowingly aid, abet, assist, advise, or encourage, any other person or persons to commit any of the offences mentioned in this act, and every person who, knowing any of such offences to have been committed, shall assist or aid the offender in escaping arrest, or trial, shall be guilty of felony, and, on conviction, shall be punished as provided in section 1 of this act.

For aiding or abetting said offences.

Sec. 4. Every person who shall associate himself with or join any one or more persons with the intent, or for the purpose, of committing any of the offences mentioned in this act, or of aiding, abetting, assisting, achieving, or encouraging any other person or persons to commit such offences, or any of them, or of preventing the arrest, or trial, of such person, or persons, who have [committed] or may commit such offences, or any of them, shall be deemed guilty of a conspiracy, and on conviction shall be punished by fine of not less than one hundred dollars, or more than five hundred dollars, or by imprisonment in the county jail not less than three nor more than twelve months, or by both such fine and imprisonment.

For conspiring to commit them.

Sec. 5. Every person who shall attempt to commit any of the offences mentioned in this act, although the same be not actually committed, shall be punished as provided in section 4 of this act.

For attempting to commit them.

Sec. 6. This act shall take effect and be in full force from and after its passage.

Approved February 21, 1879.

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SPECIAL LAWS.

AN ACT to incorporate the town of Butte.

Be it enacted by the Legislative Assembly of the Territory of Montana:

ARTICLE I.—OF BOUNDARIES.

Section 1. That the inhabitants of the city of Butte, in Deer Lodge county, Territory of Montana, be, and they are hereby, constituted a body politic and corporate, by the name and style of "The City of Butte," and by that name shall have perpetual succession; may sue and be sued, plead and be impleaded, in all courts of law and equity, and may have and use a common seal, and alter the same at pleasure.

Sec. 2. That the following described territory shall for the present compose the said town, to-wit: Beginning at a post from which the corner to sections 7, 12, 13, and 18 on the east boundary of township No. 3, N. R. 8 west bears north 46°, 15′ east, 19.18 chains distant; thence west 42.31 chains to a post; thence south 40.00 chains to a post; thence east 34.34 chains to a post; thence —— 19.50 chains to a post; thence east 8.16 chains to a post; thence north 27.50 chains to the place of beginning, containing an area of 183 83-100 acres.

Sec. 3. Whenever any tract of land, adjoining the city of Butte, shall be laid off into town lots, and duly recorded, as may be required by law, the same may, by the city council, be annexed to and become a part of the city of Butte.

Sec. 4. The inhabitants of said city, by the name and style aforesaid, shall have power to purchase, receive and hold property, both real and personal, or mixed, either in or beyond the city for burial grounds, and for other purposes, for the use of the inhabitants of said city.

ARTICLE II.—OF THE CITY COUNCIL.

Section 1. There shall be a city council, to consist of a mayor and board of aldermen.

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Sec. 2. The board of aldermen shall consist of two members from each ward, to be chosen by the qualified voters, for two years, and until others shall be legally qualified.

Sec. 3. No person shall be an alderman unless at the time of his election he shall be a tax-paying householder, and have resided within the limits of the city one year immediately preceding election, and shall have the requisite qualifications to vote for members of the Legislature, and be a resident of the ward for which he is elected.

Sec. 4. If any alderman, after his election, remove from the ward for which he was elected, his office shall be declared vacant; the mayor and aldermen shall serve without any compensation whatever.

Sec. 5. At the first meeting of the city council the aldermen shall be divided, by lot, into two classes. The seats of those of the first class shall be vacated at the expiration of the first year; and of the second class at the expiration of the second year; so that one-half of the board shall be elected annually.

Sec. 6. The city council shall judge of the qualifications and returns of their own members, and shall determine all contested elections under this act.

Sec. 7. A majority of the city council shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, under such penalties as may be prescribed by ordinances.

Sec. 8. The city council shall have power to determine the rules of its proceedings, punish its members for disorderly conduct, and, with the concurrence of two-thirds of the members elected, expel any member.

Sec. 9. No alderman shall be appointed to any office under the authority of the city, nor for one year after the termination of his office.

Sec. 10. All vacancies that shall occur in the board of aldermen shall be filled by election.

Sec. 11. The mayor and aldermen, before entering upon the duties of their respective offices, shall each take and subscribe an oath, or make affirmation, that he will support the Constitution of the United States and the Organic Act of this Territory, and that

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he will well and truly perform the duties of his office to the best of his skill and ability.

Sec. 12. Whenever there shall be a tie in the election of alderman, the judges of the election shall certify the fact to the mayor, who shall determine the same by lot, in such manner as shall be prescribed by ordinance.

Sec. 13. There shall be twelve stated meetings of the city council in each year, at such times and places as may be prescribed by the city council.

ARTICLE III.—OF THE EXECUTIVE OFFICER.

Section 1. The chief executive officer shall be a mayor, who shall be a tax-paying householder, and who shall be elected by the qualified voters of the city, and shall hold his office for one year, and until his successor shall be elected and qualified.

Sec. 2. No person shall be eligible to the office of mayor who shall not have been a resident of the city for one year next preceding his election, or who shall be under twenty-five years of age, or who shall not, at the time of his election, be an elector.

Sec. 3. If any mayor, during the term for which he shall have been elected, remove from the city, or shall be absent from the city for the space of four months, his office shall be vacated.

Sec. 4. When two or more persons shall have an equal number of votes for mayor, the judges of election shall certify the same to the city council, who shall proceed to determine the same by lot, in such a manner as may be provided by ordinance.

Sec. 5. Whenever any election for mayor shall be contested, the city council shall determine the same as may be prescribed by ordinance.

Sec. 6. Whenever any vacancy shall happen in the office of mayor, it shall be filled by election.

ARTICLE IV.

Section 1. On the first Monday in May, A. D. 1879, an election shall be held in said city for one mayor for the city and two aldermen for each ward, and forever thereafter, on the first Monday in May, of each year, there shall be an election of one mayor for said city and one alderman for each ward.

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Sec. 2. All citizens of the United States, and those who have declared their intention to become such, of twenty-one years of age, who shall be tax-paying householders, and who shall have been actual residents of said city three months preceding said election, shall be entitled to vote for city officers and the adoption of this charter: *Provided*, That said voters shall give their votes in the wards in which they shall respectively reside.

ARTICLE V.—POWERS OF THE CITY COUNCIL.

Section 1. The city council shall have power and authority to levy and collect *ad valorem* taxes for city purposes upon all taxable property, real, mixed, and personal, except as herein excepted, within the limits of the city, not exceeding three-tenths of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same in any manner that may be prescribed by ordinance not repugnant to the Constitution of the United States, or the Organic Act of this Territory.

Sec. 2. The city council shall have power to appoint all officers, except the police magistrate, city attorney, city assessor, and marshal, who shall be nominated by the mayor, and by him appointed, by and with the advice of the city council, whose term of office shall be for one year, subject to removal as herein provided.

Sec. 3. The city council shall have power to require of all officers, appointed or elected in pursuance of this act, bonds, with penalty and security, for the faithful performance of their respective duties, as may be deemed expedient, and also require of all officers appointed, or elected, as aforesaid, to take such oaths, or make such affirmation, as the city council may prescribe for the faithful performance of the duties of their respective offices, before entering upon the discharge of the same.

Sec. 4. To appropriate money and funds for the payment of the expenses of the city.

Sec. 5. To make regulations to prevent the introducing of contagious diseases into the city, to make quarantine laws for that purpose, and to enforce the same within five miles of the city.

Sec. 6. To make regulations to secure the general health of the inhabitants; to declare what shall be a nuisance, and to prevent and remove the same.

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Sec. 7. To provide the city with water, erect hydrants and pumps, build cisterns and dig wells in the streets for the supply of engines and buckets.

Sec. 8. To open, alter, abolish, widen, extend, establish, grade, pave, or otherwise improve and keep in repair streets, avenues, lanes, alleys, sidewalks, drains, and sewers.

Sec. 9. To establish, erect, and keep in repair bridges.

Sec. 10. To divide the city into wards, alter the boundaries thereof, and create additional wards, as the occasion may require.

Sec. 11. To establish, support, and regulate night watches.

Sec. 12. To provide for lighting the streets, and to erect lamp posts.

Sec. 13. To provide all needful buildings for the use of the city.

Sec. 14. To provide for the enclosing, improving, and regulating of all public grounds belonging to the city.

Sec. 15. The said city council shall not be authorized to incur any indebtedness on behalf of said city for any purpose whatever to exceed the sum of five hundred dollars.

Sec. 16. It shall have the power to provide for the prevention and extinguishment of fires; to organize and establish fire companies.

Sec. 17. To regulate the building and fixing of chimneys, and to fix the flues thereof.

Sec. 18. To regulate the storage of powder, tar, pitch, and resin, and other combustible or dangerous materials.

Sec. 19. To regulate parapets, walls, and partition fences, and restrain cattle, hogs, horses, sheep, and dogs from running at large.

Sec. 20. To establish standard weights and measures, and regulate the weights and measures to be used in the city in all cases, not otherwise provided for by law, and to order all laws on the subject to be enforced, and to fix and enforce payment of fines for non-compliance with any such order.

Sec. 21. To provide for taking the enumerations of the city.

Sec. 22. To regulate the election of city officers, and to provide for the removing from office any person holding an office created by ordinance.

Sec. 23. To fix the compensation of city policemen who shall

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be night watchmen: *Provided*, That such compensation shall not exceed the same paid by law in this Territory to other officers for like service, and regulate fees for jurors, witnesses and others for services rendered under this act, or any ordinance made in pursuance thereof.

Sec. 24. To regulate the police of the city; to enforce fines, forfeitures, and penalties for the breach of any ordinance, and to provide for the receiving and appropriation of such fines and forfeitures, and the enforcement of such penalties; and all moneys collected under or by authority of any city ordinance shall be deemed to be taken to belong to said city for the general use and benefit of the inhabitants thereof, for the purposes herein provided.

Sec. 25. The city council shall have power to make all ordinances which shall be necessary and proper for carrying into execution the powers specified in this act, so that such ordinances incur no indebtedness whatever, and necessitate no levying of taxes exceeding three mills on each dollar, except as provided for in sections five and six in article seven, and be not repugnant to, nor inconsistent with, the Constitution of the United States, nor the Organic Act of this Territory.

Sec. 26. The style of the ordinances shall be "Be it ordained by the city council of the city of Butte."

Sec. 27. All ordinances of the city council shall, within ten days after they shall have been passed, be posted in three public places in said city, and shall not be in force until they have been posted as aforesaid.

Sec. 28. All ordinances of the city council may be proven by the seal of the corporation, and when printed in book form, or pamphlet form, and purporting to be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

ARTICLE VI.—THE MAYOR.

Sec. 1. The mayor shall preside at all meetings of the city council, and, in case of a tie, he shall have the casting vote, and in no other; in case of the non-attendance of the mayor at any meeting, the board of aldermen shall appoint one of their number as chairman, who shall preside at the meeting, but shall not thereby lose his right to vote on any question before the board.

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Sec. 2. The mayor, or any two aldermen, may call a special meeting of the city council, the city clerk, on their requisition, giving reasonable notice in writing thereof to all members of the city council present in said city.

Sec. 3. The mayor shall at all times be vigilant and active in enforcing the laws and ordinances of the government of the city. He shall inspect the conduct of all subordinate officers of said city and cause negligence or positive violation of duty to be prosecuted and punished. He shall from time to time communicate to the aldermen such information, and recommend such measures, as in his opinion may tend to the improvement of the finances, the police, the health, security, and comfort of the city.

Sec. 4. He is hereby authorized to call on every male citizen of said city over the age of eighteen years to aid in the enforcement of the laws and ordinances, and in case of riots to call out the militia to aid him in suppressing the same, or other disorderly conduct, preventing and extinguishing fires, for securing the peace and safety of the city, or of carrying into effect any law or ordinance; and any person who shall not obey such call shall forfeit to said city a fine not exceeding twenty-five dollars.

Sec. 5. He shall have power, whenever he shall deem it necessary, to require of any of the officers of said city an exhibit of his books and papers.

Sec. 6. He shall have power to execute all acts that may be required of him by any ordinance made in pursuance of this act.

Sec. 7. He shall also have such power as may be vested in him by ordinance of the city in, and over, all places within five miles of the boundaries of the city, for the purposes of enforcing the health and quarantine ordinances and regulations thereof.

Sec. 8. In case the mayor shall be guilty of a palpable omission of duty, or shall wilfully and corruptly be guilty of oppression, malconduct, or partiality in the discharge of the duties of his office he shall be liable to be indicted in the district court of the proper county, and, on conviction, he shall be fined not more than five hundred dollars, and the court shall have the power, upon the recommendation of the jury, to add to the judgment of the court that he be removed from office, and forever thereafter be disquali-

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fied from holding office under this act, or any ordinances of said city.

ARTICLE VII.—MISCELLANEOUS PROVISIONS.

Section 1. The city council shall have the power, for the purpose of keeping the streets, lanes, avenues, and alleys in repair, to require every able-bodied male inhabitant in said city, over the age of twenty-one and under forty-five years, to labor on said streets, lanes, avenues, and alleys not exceeding one day in each and every year, and every person failing to perform such labor, when duly notified by the street commissioners, shall forfeit and pay two dollars for said day so neglected or refused, to be used in improving the public streets.

Sec. 2. The members of the city council and firemen shall, during their term of service as such, be exempt from working out any road or street tax, and shall likewise be exempt from serving in the militia of the Territory, or on any jury.

Sec. 3. The council shall have power to provide for the punishment of offenders by imprisonment in all cases where such offender shall fail or refuse to pay the fine and forfeiture which may be recovered against them according to the laws of this Territory.

Sec. 4. The city council shall have power by ordinance to levy and collect a special tax on the holders of lots on any street, lane, avenue, or alley, according to their respective fronts, for the purpose of paving, grading, or planking sidewalks, and lighting such street, lane, avenue, or alley: *Provided*, Such tax shall not exceed the actual costs of such sidewalks and lighting respectively, which tax shall be collected in the same manner as other city taxes.

Sec. 5. That no levy or assessment of taxes, not heretofore provided for, shall be made by said city council, except upon a vote of two-thirds of the members thereof, and every levy of taxes for each purpose shall be set forth in a section of an ordinance by itself.

Sec. 6. After the passage of said ordinance by such vote, the same shall be published in one city newspaper for at least one week, together with a notice that the same will be submitted to a vote of the tax-paying householders of said city, on a day, and at a place in each of the wards to be named, which election shall be conducted as is provided in other cases, and the ballots shall be

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"for section (——) of an ordinance entitled (giving title)," or, "against section (——) of an ordinance entitled (giving title)," and if two-thirds of said voters shall approve the same, the said ordinance shall be in full force; but if not so approved, the same shall be void.

Sec. 7. The city council shall provide the detailed method of conducting such elections not inconsistent with this act, but nothing in this and the two preceding sections shall effect the passage of ordinances levying taxes for the maintenance of the city police, (not exceeding two in number), the payment of the night watchmen, (not exceeding two in number), paraphernalia for extinguishing fires, cleaning streets, enclosing and protecting cemeteries, maintaining and keeping in repair the property of the fire department, and necessary notices in one of the city newspapers.

Sec. 8. That the city shall not be liable for any costs in any suit prosecuted in its name in its own courts, nor shall any fees taxed exceed in amount the items of fees allowed for similar services to other officers in this Territory.

Sec. 9. All fines and forfeitures collected for offenses committed, or penalties incurred, within the incorporation limits of the city of Butte, shall be paid into the treasury of the said city, by the officer collecting the same, with details of sources, and on what account paid out.

Sec. 10. The city council shall cause to be published, annually, a full and complete statement of all moneys received and expended, from whatever source received, and account paid out, with full details.

Sec. 11. All suits, actions, and prosecutions instituted, commenced, or brought by the corporation hereby created, shall be prosecuted in the name of the city of Butte.

Sec. 12. Appeals shall be allowed from decisions in all cases arising under the provisions of this act, or any ordinance passed in pursuance thereof, to the district court, and every such appeal shall be granted in the same manner, and with like effect, as appeals are taken from and granted from justices of the peace under the laws of this Territory.

Sec. 13. All contracts involving the expenditure of one hundred dollars or more, the city council shall advertise the same, with

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specifications, for a period to be prescribed by ordinance, and award the same to the lowest responsible bidder, and they shall so advertise all contracts when convenient to do so.

Sec. 14. Whenever the mayor shall absent himself from the city, or resign, or die, or his office shall otherwise become vacated, the board of aldermen shall immediately proceed to elect one of their number president, who shall be mayor pro-tem, until the office shall be filled by election as herein provided.

Sec. 15. This act is declared to be a public act, and may be read in evidence in all courts of law and equity within this Territory without proof.

Sec. 16 The city marshal and the constables within said city of Butte, shall be authorized and have power to execute anywhere within the county wherein said city may be located, all processes issued by the police magistrate of said city, or other magistrate within said city, and the said marshal shall have power to do all the acts that a constable may lawfully do, and shall receive the same fees that are allowed to constables in similar cases, and shall give bonds as constables are required by law to give.

Sec. 17. All actions brought to recover any penalty, or forfeiture, under this act, or any ordinance, by-law, or police regulation made in pursuance thereof, shall be brought in the corporate name of said city.

Sec. 18. In all prosecutions for any violation of any ordinance, by-law, or other regulation, the first process shall be by summons, unless oath or affirmation shall be made for a warrant as in other cases.

Sec. 19. Upon rendition of judgment the officer rendering such judgment may require the defendant to be confined in jail for a term not exceeding three months, and all persons so committed shall be [con]fined one day for each five dollars of such judgment and costs unless he shall pay the same.

Sec. 20. The police magistrate shall have jurisdiction in all cases of violation of the city ordinances, and shall have the same jurisdiction in all civil and criminal proceedings as is now, or shall hereafter be, conferred upon other justices of the peace of this Territory, and, in all courts of this Territory, said police magistrate shall be held to be and he is hereby constituted a justice of the

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peace; but no change of venue shall be allowed from said police magistrate to any justice of the peace for the hearing or determination of any case when proceedings shall be commenced against any person or persons for the violation of any city ordinance.

Sec. 21. The duties of all officers mentioned in this act, not herein prescribed, shall be prescribed by ordinance.

Sec. 22. There shall be a police magistrate, city attorney, who shall also act as city clerk, city assessor, who shall also act as city treasurer and collector, and the city marshal, appointed as heretofore provided. The police magistrate shall be a justice of the peace in said county, and he shall have the exclusive jurisdiction of all offences against the ordinances of said city. The city attorney, city assessor, and city marshal, shall severally discharge the duties usually pertaining to said offices respectively, and the manner thereof may be prescribed by ordinance.

Sec. 23. This charter shall be submitted to the qualified voters of the city of Butte, on or before the first Monday in April, 1879, at one convenient place therein, by direction of the commissioners appointed in this act. The ballots shall have printed or written thereon, "For the Charter," or, "Against the Charter," and if a majority of the votes so cast at the election shall be in favor of the charter, then this act to be in full force and effect; but if a majority of the votes so cast shall be against the charter, then this act shall remain suspended, unless thereafter enforced as hereinafter set forth.

Sec. 24. W. A. Clark, Jeremiah Roach, Henry Jacobs, James Talbott, Emanuel Hirbour, James Mathews, and Dr. Chas. F. Mussigbrod, be, and are hereby, constituted and appointed to act as commissioners, and to serve in such capacity until the first board of aldermen of said city shall be elected and duly qualified. Such commissioners, or any three of them, shall, if a majority of the electors of said city vote in favor of this charter, within thirty days from its acceptance as aforesaid, proceed to lay out the territory embraced within the limits of said city of Butte into four wards, and fix the boundaries of the same; and shall also provide for holding the first election herein appointed in the several wards of said city; shall fix the place for holding said election in each of said wards; shall appoint the persons to act as judges of election in each of said wards, who shall be sworn, and whose places may be filled,

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in case they do not serve, as provided by law in other elections. Said election shall be held and returns thereof made and certified in all respects as provided by law for the election of members of the Legislative Assembly. A copy of said returns of said election shall be delivered to the commissioners, who shall canvass the same within three days from the time received, and the persons receiving the highest number of votes for the several officers to be elected under this act, and the aldermen for each ward shall be declared by said commissioners, or any four of them, duly elected to said offices. If two or more persons shall, at said election, receive the same number of votes for one of said offices, the commissioners shall determine the same by lot. Thereafter, on the first Monday in May each annual election shall take place.

Sec. 25. In case of rejection of this charter by a majority of the voters at the first election, at any time or times thereafter, when sixty of the qualified voters of said city shall petition said commissioners for a re-submission of said charter to the voters of said city, then it shall be the duty of said commissioners to again submit the adoption, or rejection, of this charter to a vote of the qualified voters of said city, and if upon said second submission a majority shall adopt this charter, then the same shall be in full force and effect from the time of its adoption. Said re-submission shall be conducted as in section 24 provided, and whenever said commissioners, or a majority of them present in said city, shall be of the opinion that an incorporation is desired, they may re-submit said charter, so many times as in their judgment shall be proper, for adoption, or rejection, in the manner in said section provided.

Sec. 26. This act shall take effect and be in force from and after its passage.

Approved February 21, 1879.

AN ACT to provide for the codification of the general laws of Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That Harry R. Comly, of the county of Lewis and Clarke, Montana Territory, be, and he is hereby, designated as a

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commissioner whose duty shall be to arrange and codify the general laws of the Territory as they may exist at the expiration of the present session of the Legislative Assembly.

Sec. 2. The said commissioner shall prepare the said codification in the form of an engrossed bill and report the same to the next session of the Legislative Assembly for its action. He shall also cause to be printed in book form the laws so codified, and shall cause to be delivered to the Territorial auditor three hundred copies of the same at least two months prior to the next regular session of the Legislative Assembly; and the said auditor, upon receipt of the same, shall send by mail one copy thereof to each of the members who shall be returned as elected to the next Legislative Assembly, one copy to each of the members of the present Legislative Assembly, and one copy each to the governor, the judges of the supreme court, and the judges of the several probate courts, and one copy thereof to each practicing attorney at law within the Territory who shall apply to the auditor therefor.

Sec. 3. In making such codification, the said commissioner shall arrange all laws relating to the practice in civil cases in the courts of justice in this Territory under one division; all laws relating to the practice in criminal cases under another division; and all laws relating to crimes and punishments under another; all other laws shall be arranged under proper titles and sections of another division. In consolidating the sections of any two or more acts he shall strictly conform to the meaning and intention of the laws as they now stand, and as near as may be the exact wording. Where it is evident that errors exist in any laws, in grammatical construction or orthography, or in referring to sections of other laws, he shall correct the same, but in all such cases he shall report to the next Legislative Assembly all such errors and corrections.

Sec. 4. The said commissioner shall receive, as compensation for his services, the sum of one thousand dollars, and for the purpose of printing the codification, as herein contemplated, the sum of one thousand five hundred dollars; and the sum of two thousand five hundred dollars for such purpose is hereby appropriated out of any moneys not otherwise appropriated in the Territorial treasury; and the Territorial auditor is hereby directed to draw his warrant upon the Territorial treasurer for the said amount of two thousand

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five hundred dollars in favor of said commissioner, when said commissioner shall have filed in the auditor's office the engrossed copy of the codification heretofore referred to for the use of the next Legislative Assembly: *Provided*, That said commissioner shall file at the same time, in the auditor's office, a good and sufficient bond to the Territory of Montana in the penal sum of three thousand dollars, with two sufficient sureties, conditioned for the faithful performance of his duties as prescribed in this act.

Sec. 5. Before proceeding to perform any duties required by this act, and as a token of his acceptance of the duties imposed, the said commissioner shall take and subscribe to the following oath of office and file the same in the office of the Territorial auditor:

I —— —— do solemnly swear that I will faithfully perform the duties of commissioner to codify the laws of Montana Territory as prescribed by an act of the Legislative Assembly entitled "An act to provide for the codification of the general laws of Montana Territory," to the best of my skill and ability; that in codifying and arranging said laws I will to the best of my skill and ability endeavor so to do as to preserve the meaning and intention of said laws, and as near as may be the exact wording of the same, as they shall be and remain upon the adjournment of the eleventh session of the Legislative Assembly.

Sec. 6. The said commissioner shall dispose of the one thousand five hundred dollars appropriated in section 4 of this act for the purpose of furnishing the three hundred copies of the said codification in book form. The printing of such codification shall be paid for at the same rate now allowed by the United States government, under the laws thereof, for public printing, and the auditor shall draw his warrant as hereinbefore provided for the cost of the printing of such codification at the rates aforesaid: *Provided*, the Territory of Montana shall in no case be held responsible for any greater amount than the said sum of one thousand five hundred dollars for such printing, nor shall any portion of the appropriation herein made be paid for any number of copies of such codification less than said number of three hundred.

Sec 7. No money herein appropriated shall be paid, nor shall the auditor draw his warrant for any part of the amount in this act

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appropriated, until the number of copies of such codification herein specified shall be printed and delivered as herein required; nor shall any portion of the amount herein appropriated to the said Harry R. Comly be paid unless such codification be printed in the manner in this act provided.

[The foregoing act having been presented to the governor of the Territory of Montana for his approval, was, on February 21, 1879, returned by the governor to the Council, in which it originated, without his approval and with his objections thereto. The objections were entered at large upon the journals of the Council; the vote by which the bill was passed was reconsidered, and on the question being put "Shall this bill pass, the objections of the governor to the contrary notwithstanding?" It was passed by a two-thirds vote of the Council. The bill was then sent to the House of Representatives, together with the objections of the governor. The vote by which the bill was passed was then immediately reconsidered, and upon the question "Shall this bill pass, the objections of the governor to the contrary notwithstanding?" It was passed by a two-thirds vote of the House.]

AN ACT to provide for the refunding of the overdue bonds of Missoula county, with accrued interest, and for other purposes.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. The county commissioners of Missoula county are hereby authorized and empowered to issue, on the credit of said county, coupon bonds to an amount sufficient to enable them to redeem all outstanding fifteen (15) per cent. bonds.

Sec. 2. Said bonds shall be of the denomination of five hundred ($500) [dollars] and of one thousand ($1,000) dollars each, and shall bear interest at the rate of six per cent. per annum. They shall be in such form as the board of commissioners may prescribe, and shall be signed by the chairman of the board of county commissioners, and the treasurer of said county, and shall also be sealed with the seal of said county, and countersigned by the clerk thereof. The coupons attached to said bonds shall be signed by the chairman of said board, the treasurer of the county, and the county clerk. Each bond issued under the provisions of this act shall be registered by said county treasurer, in a book to be kept for that purpose, and such registration shall show the number and amount of each bond, and when and to whom issued.

Sec. 3. The commissioners of Missoula county are hereby authorized and empowered to issue to the party, or parties, holding or owning the fifteen (15) per cent. bonds of said county now due

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and unpaid, a sufficient amount of six per cent. bonds of said county, at their par value, as will enable them to take up and pay off said bonds, with the accrued interest thereon: *Provided*, The same may be done with the consent of the holder, or holders, of the fifteen per cent. bonds.

Sec. 4. The treasurer of said county shall pay in lawful money of the United States, at the expiration of six (6) months from the date of the issue of such bonds, the interest due thereon, and semi-annually thereafter upon presentation at his office of the proper coupon, which shall show the amount due, and the number of the bond to which it belonged; but in case the holder, or holders, of any such bonds issued under the provisions of this act, shall elect to have the principal or interest of said bonds paid in the city of New York, or elsewhere, then, upon giving the treasurer of said county notice thereof, and designating some bank, or banking house, in said city of New York, or elsewhere, the treasurer of said county is hereby authorized and directed to pay the same at such designated bank, or banking house. All coupons so paid shall be reported to the board of commissioners at their first meeting thereafter.

Sec. 5. The treasurer shall register, in a book kept for that purpose, all bonds redeemed by him, which book shall show the amount of the bond, its number and date, to whom issued, and when, and from whom redeemed. Said treasurer shall also write across the face of said bond, in red ink, the word "Redeemed," with the date of such redemption, and shall subscribe his name thereto. He shall, also, cancel the same with a cancelling stamp.

Sec. 6. The county commissioners of the county of Missoula, at their regular meeting on the first Monday of March, 1879, and thereafter on the first Monday in January of each year, upon the basis of the receipts and expenditures of the county for the preceding fiscal year, shall levy the following *ad valorem* tax upon each dollar of property subject to taxation in said county, to-wit:

First. To meet the current expenses of said county for the ensuing year not exceeding twelve (12) mills on the dollar, which shall constitute the current expense fund of said county, and shall be applied to the payment of the current expenses of said county.

Second. They shall levy annually a sufficient number of mills

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on each dollar of taxable property in said county to pay the interest upon the bonds authorized to be issued under the provisions of this act, and the ten per cent. bonds of said county, which sum shall constitute the interest fund of said county, and shall be applied by the treasurer of said county to the redemption of the interest coupons as the same shall become due and payable.

Third. To create a sinking fund for the final redemption of the bonds of Missoula county under the provisions of this act, and the ten per cent. bonds of said county as the same shall become due and payable, the board of county commissioners shall levy not less than one-fourth of one mill on each dollar of taxable property in said county for each fifteen thousand ($15,000) dollars of bonds of said county, which sum shall be paid to, and receipted by, the treasurer of the Territory, who, with the governor and auditor, shall invest the same, with the concurrence of a majority of the board of county commissioners of said county, as in their judgment will best answer the interests of said county and the objects thereof.

Fourth. For Territorial purposes, three mills on the dollar.

Fifth. For school purposes, four mills on the dollar, and no more.

Sixth. For the payment of outstanding warrants on the contingent fund, not to exceed one-half mill on the dollar.

Seventh. For the payment of outstanding warrants on the road and bridge fund, not exceeding one-half mill on the dollar.

Eighth. For the payment of outstanding warrants on the poor fund, not exceeding one-half mill on the dollar.

Ninth. For the payment of outstanding warrants on the general fund, not exceeding one-half mill on the dollar.

Tenth. For the repair of that portion of the Mullan road lying between Medicine Tree hill and the west bank of the Big Blackfoot river, one mill on the dollar, and no more.

Eleventh. For the repair of that portion of the Bitter Root and Bannack wagon road lying between the mouth of Sleeping Child creek and the summit of the divide between the Bitter Root and Big Hole rivers, one mill on the dollar, and no more.

Sec. 8[7]. It is further provided that the per capita tax, and fifty per cent. of all licenses authorized by law, shall be placed to the credit of the current expense fund of said county, and the residue

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of said license tax shall be placed to the credit of the general fund.

Sec. 9[8]. It is hereby made the duty of the board of county commissioners of said county to require the treasurer-elect of said county, before entering upon the duties of his office, to execute a penal bond to the said board of county commissioners of said county, in a sum not less than the total revenues of said county for the preceding year, said bond to be approved by said board of county commissioners of said county at their regular March session of each year.

Sec. 10[9]. Sections numbered 1, 2, 3, 4, 5, 6, 7, 8 and 9, inclusive, of "An act in relation to the collection and disbursements of the revenue of Missoula county, and for other purposes," approved February 16th, 1877, and all other acts, or parts of acts, in conflict with the provisions of this act, are hereby repealed.

Approved February 21, 1879.

AN ACT for the redemption of the funded debt of Gallatin county, Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the county commissioners of Gallatin county are hereby authorized and empowered to issue, on the credit of said county, coupon bonds to an amount sufficient to enable them to redeem all outstanding bonds of said county falling due in the years A. D. 1879, and A. D. 1880, which said bonds shall be redeemable at the pleasure of said county, after seven years from their date, and shall be dated at the time of their issue, and shall become due and payable fifteen years from their date; and the faith of the county of Gallatin is hereby pledged for the payment of the interest and the redemption of the principal of said bonds.

Sec. 2. Said bonds shall be lithographed, and shall be of the denominations of fifty, one hundred, five hundred, and one thousand dollars each, and shall bear interest at a rate not exceeding eight per cent. per annum. They shall be in such form as the commissioners may direct, and they shall be signed by the chairman of the board of county commissioners, and the treasurer of said

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county. They shall also be sealed with the county seal of said county, and countersigned by the clerk of said county. The coupons attached to the bonds shall be signed by the chairman of said board, the treasurer of the county, and the county clerk. Each bond issued shall be registered by the said county treasurer, in a book provided for that purpose, and such registration shall show the number, and amount of each bond, and when and to whom issued.

Sec. 3. When it shall appear to said board of county commissioners, at any regular meeting thereof, that there is not a sufficient sum in the sinking fund to meet any outstanding bonds maturing, and falling due, before their next regular session, they shall order a sale of a sufficient number of the bonds provided for in this act to meet such deficiency.

Sec. 4. Such sale of bonds shall be by public auction to the highest bidder for cash, but, for not less than their par value, and shall be made at the front door of the court house in said Gallatin county. Notice of the time and place of such sale shall be given by advertisement in one or more newspapers, published in this Territory, for a period of not less than four weeks prior to the time of such sale, and in like manner by giving notice in one or more weekly newspapers published in the city of New York, State of New York, for a period of not less than four weeks, said notice to be given in said weekly newspaper, or newspapers, sixty days prior to the time of such sale.

Sec. 5. The treasurer of said county shall pay, in lawful money of the United States, at the expiration of six months from the date of the issue of each bond, the interest due thereon, and semi-annually thereafter, upon presentation at his office of the proper coupon, which shall show the amount due, and the number of the bond to which it belonged. All coupons so paid shall be reported to the said commissioners at their first meeting thereafter. Should the holder, or holders, of said bonds to an amount of not less than one thousand dollars, give the said treasurer notice in writing that they desire the bonds so held by them, and the interest accruing thereon, to be paid at a designated national bank in the city of New York, then the said bonds and coupons so held by such person or persons, shall be payable at such bank in the city of

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New York; otherwise said bonds and coupons shall be payable at the office of said treasurer.

Sec. 6. The proceeds of the sale of such bonds shall be paid into the county treasury of said county and shall be applied to the sinking fund.

Sec. 7. The treasurer shall register, in a book to be kept by him for that purpose, all bonds redeemed by him, which book shall show the amount of the bond, its number and date, when and to whom issued, and when and from whom redeemed. Said treasurer shall also write across the face of said bond in red ink the word "Redeemed," with the date of such redemption, and shall subscribe his name thereto. He shall also cancel said bonds with a cancelling stamp.

Sec. 8. The county clerk shall receive, in full compensation for his services in making out and signing and affixing the county seal to the bonds and coupons, contemplated in this act, the sum of fifty cents for each bond issued, anything in the law regulating the fees of county clerks to the contrary notwithstanding.

Sec. 9. This act shall not be so construed as to entitle the county treasurer to any other or further compensation than he is now allowed by law.

Sec. 10. All acts, and parts of acts, in conflict with this act, are hereby repealed.

[The foregoing act, having been presented to the governor of Montana Territory, on the thirteenth day of February, 1879, for approval, and not having been returned by him to that House of the Legislative Assembly in which it originated within the time prescribed by section 1842, chap. 1, title XXIII, revised statues of the United States, has become a law without his approval.]

AN ACT to provide for the funding of the outstanding twelve per cent. bonds of Jefferson county, Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the commissioners of Jefferson county, Montana Territory, are hereby authorized and empowered to issue, on the credit of said county, coupon bonds to an amount not exceeding forty thousand dollars, or so much thereof as may be necessary, to redeem all of the outstanding twelve per cent. bonds heretofore issued by said county, together with the interest remaining unpaid

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thereon, which bonds shall be redeemable at the pleasure of said county after five years from their date, and shall become due and payable twenty years from their date, and bear interest at a rate not exceeding ten per cent. per annum.

Sec. 2. The bonds authorized to be issued by this act shall be in such form as said commissioners may direct, and shall bear the signature of the chairman of the board of county commissioners of said county, and the Treasurer of said county, and shall be sealed with the county seal, and countersigned by the clerk of said county; and the coupons attached to said bonds shall be signed by the chairman of said board, the treasurer of said county, and the county clerk; and each bond issued shall be registered by the county treasurer, in a book provided for that purpose, and it shall show the number and amount of each bond, and to whom issued; and the said bonds shall be sold by said county commissioners, or their authorized agent, or agents, at not less than ninety-eight cents on the dollar of the face thereof as hereinafter provided.

Sec. 3. The said county commissioners shall, as soon as practicable after the passage of this act, give notice in not less than two weekly newspapers, published in this Territory, for a period of not less than four weeks, to the effect that said county commissioners will sell said bonds, (briefly describing the same) and stating the time when said sale shall take place. But said county commissioners may in their discretion at any time, and without previous notice, negotiate and sell said bonds at private sale if, in their opinion, the interest of said county is best subserved thereby: *Provided*, Said bonds shall not be sold at private sale for less than 98 per cent. All moneys arising from the sale of said bonds shall be paid into the treasury of said county to the credit of the sinking fund, and shall immediately thereafter be applied to the payment of the outstanding twelve per cent. bonds of said county and the unpaid interest thereon.

Sec. 4. All bonds authorized to be issued by this act shall be of the denomination of five hundred dollars, and the faith of said county of Jefferson is hereby pledged for the payment of the interest and the redemption of the principal of said bonds.

Sec. 5. The treasurer of said county shall pay in lawful money of the United States, at the expiration of six months from the date

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of the issue of each bond, the interest due thereon, and semi-annually thereafter, upon presentation at his office of the proper coupon, which shall show the amount due and the number of the bond to which it belonged; but, in case the holder, or holders, of the said bonds shall give the treasurer notice in writing that they wish the bonds so held by them, and the interest accruing thereon, to be paid at a designated bank in the city of New York, then the said bonds and coupons shall be payable in said city of New York: Otherwise the said bonds and coupons shall be payable at the office of said county treasurer; and all bonds and coupons so paid by said county treasurer shall be returned by said treasurer to the board of county commissioners at his next settlement with them after such payment, and the said commissioners shall cancel said bonds and coupons in the manner now provided by law for the cancellation of county warrants.

Sec. 6. It shall be the duty of said county commissioners to cause to be set aside forty per cent. of all moneys collected by said county, or received into the treasury thereof, for the purpose of paying the interest accruing on the bonds issued and sold under the provisions of this act; and all surplus of said forty per cent. received into the treasury, after the payment of the interest aforesaid, shall constitute a sinking fund and be applied to the redemption of the principal of said bonds as hereinafter provided.

Sec. 7. Whenever, at any time, the sum in said sinking fund shall exceed the sum of five hundred dollars, and from time to time thereafter when it may so occur, the said treasurer shall cause a notice to be published in one newspaper of Montana Territory that he will, in thirty days from the date of such notice, redeem said amount of bonds, which may then be payable, giving the numbers thereof, preference being given to the oldest issue; and if at the expiration of said thirty days, the holder, or holders, of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation. Such notice shall be sent by mail to such places in New York city of which the treasurer shall have knowledge by virtue of section 5 of this act, with like effect.

Sec. 8. If at any time before the expiration of five years from the date of said coupon bonds, there shall accumulate in the sinking

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fund of said county the sum of five hundred dollars, or more, and as often as the same may occur, the treasurer of said county shall purchase from the holder, or holders, of the said coupon bonds, at not exceeding their par value, such bonds as he may have money in the sinking fund applicable to such purpose to purchase or redeem, and the bonds so purchased and redeemed shall be returned by said county treasurer to the board of county commissioners at his next settlement with them thereafter, and they shall be by them disposed of as provided in section 5 of this act.

Sec. 9. The treasurer of said county, whose duty it shall be to receive and pay out the funds in this act provided, shall, before entering upon the discharge of said duties, execute to the board of county commissioners of said county a bond, with two or more sufficient sureties to be approved by said board, and in such penal sum as they may direct, to the effect that he will faithfully discharge all the duties required of him, and will pay out and properly account to said board of county commissioners for all moneys which may come into his possession by virtue of the provisions of this act, which bond, with the approval of the board endorsed thereon by their clerk, shall be filed in the office of the county clerk of said county.

Sec. 10. The treasurer shall be entitled to receive as compensation for receiving the existing bonds, and for making out and replacing them with new bonds, and for the receiving and paying out the funds necessary to said transfer, one-half of one per cent. of the amount thereof, in full payment of all services to be by him performed, anything in the act prescribing the fees of county treasurer to the contrary notwithstanding.

Sec. 11. The county clerk shall receive in full compensation for his services, in making out, and signing, and affixing the county seal to, the bonds and coupons contemplated in this act, the sum of fifty cents for each bond issued, anything in the law regulating the fees of county clerks to the contrary notwithstanding.

Approved February 21, 1879.

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AN ACT concerning the county of Custer.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That so much of section one of an act entitled "An Act to attach the counties of Choteau, Big Horn, and Dawson to other counties for judicial purposes," approved January 4th, 1872; and so much of section eleven of chapter twenty of an act entitled "An Act revising, re-enacting and codifying the general and permanent laws of Montana Territory," approved January 12th, 1872; and so much of any other act or acts as attach the then county of Big Horn (now county of Custer) to the county of Gallatin for judicial purposes, be, and they are hereby, repealed: *Provided*, That the repeal of said acts shall not operate to deprive the district court of the first judicial district, sitting in and for the county of Gallatin, of jurisdiction of and over any offense of which it has now, or heretofore has had, jurisdiction, until a term of the court shall be appointed to be held, and shall be held, in the said county of Custer; but hereafter, for all offenses cognizable in the district court, the defendants may be held to appear and answer at the next term of the district court to be holden in the county of Custer, if such offense shall have been committed in the county of Custer, or in the county of Gallatin, at the option of the officer so holding such person to appear and answer.

Sec. 2. Whenever a term of the district court shall be provided to be held in the said county of Custer, pursuant to the provisions of section 1914 of the Revised Statutes of the United States, it shall and may be lawful for the justice presiding at the district court sitting in and for the county of Gallatin, at the instance of the Territory, or the defendant, or defendants, or of his own motion, to change the venue in any criminal action then there depending, to the court to be held in the county of Custer, and to require of any defendant, recognized to appear at said court in the county of Gallatin, that he give an undertaking, with sufficient sureties as provided by law, to be and appear before the next term of the district court to be held in said county of Custer, then and there to further answer for the offense charged or named; and if such parties, so recognized and appearing, have not been indicted, the court, on motion of the district attorney, or of its own motion, may direct such party to

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appear before any magistrate in Custer county, to be examined pursuant to the provisions of chapter six of the criminal practice act of the Territory of Montana, approved January 12th, 1872, and issue a warrant therefor, under the seal and hand of the clerk of the court over which said justice presides, unless a recognizance for such appearance, with sufficient sureties, shall be entered into pursuant to law; and the said court may also recognize any and all witnesses which in its judgment the public interests require to be recognized, and the transcripts, indictments, and other papers, may be transmitted to the said county of Custer to be filed in the court pursuant to law: *Provided*, That the provisions of this section shall only apply to such prosecutions as are of, and for, offenses alleged to have been committed within the limits of the said county of Custer.

Sec. 3. That, upon the establishment of a district court in and for the county of Custer, it shall be the duty of the court sitting in and for the county of Gallatin, whenever, in its view, the public interests, or the private interest of the litigants and witnesses, will be promoted thereby, or whenever either party, on action therefor, shall bring himself within the provisions of Title 4 of an act entitled "An Act to provide a code of civil procedure in the Territory of Montana," approved February 16th, 1877, to change the venue of any civil action pending in the court of Gallatin county to the said county of Custer; and the said judge presiding in the county of Gallatin, at said term of the district court, is hereby authorized and empowered to make any and all orders necessary or convenient to carry into effect the first three sections of this act, and to secure the attendance of criminals at said term of the court to be held in the county of Custer; and in the event that any offense of which any prisoner may stand charged is not bailable, or in the event that any recognizance required is not given, the prisoner, or prisoners, may be committed to the jail of said Gallatin or Custer county.

Sec. 4. That the town situate on Tongue river, about two miles below Fort Keogh, is hereby named and shall hereafter be known as Miles, and the same is hereby declared to be the county seat of the county of Custer, and it shall so remain until the same shall be changed in the manner provided by law.

Sec. 5. That nothing in this act contained shall be construed to

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deprive the district court of the Territory, sitting in and for the county of Gallatin, of any civil or criminal jurisdiction, the jurisdiction herein conferred on the district court in and for the county of Custer being concurrent with that of Gallatin county until the term shall be held in and for Custer county; and thereafter the jurisdiction of the courts of each of said counties shall be subject to, and be regulated by, the general laws applicable thereto.

Sec. 6. That the official acts of the board of county commissioners of said county of Custer, and of all other officers thereof, required to be done at the county seat of said county, and all records kept or made by any officer pursuant to law, and which were required to be made or kept at the county seat of said county, and heretofore made, done, or kept elsewhere, shall be as valid, to all intents and purposes whatsoever, as if the same were made, done, or kept at the county seat; but hereafter all records shall be kept in, and all official acts be done at, the place required by law.

[The foregoing act, having been presented to the governor of Montana Territory, on the fifth day of February, 1879, for approval, and not having been returned by him to that House of the Legislative Assembly in which it originated within the time prescribed by section 1842, chap. 1, title XXIII, revised statues of the United States, has become a law without his approval.]

AN ACT to enable Meagher county to remove the county seat.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. The county commissioners of the county of Meagher, at their meeting on the first Monday in March, A. D. 1879, are hereby authorized, and required, to cause a special election to be held in said county on the first Monday in May, 1879, for the purpose of determining whether the county seat of said county shall remain at Diamond city, the present location thereof, or be removed to a point to be selected by said board at, or in the vicinity of, the White Sulphur Springs in said county.

Sec. 2. At such election the ballots shall have written or printed upon them the words "For county seat of the county of Meagher," and underneath said words the name of the place for which the voter desires to vote, but which shall be the place mentioned in the

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notice of the election and submitted under the provisions of this act.

Sec. 3. The judges of said election shall be appointed by the county commissioners, and such election shall in all respects be conducted as provided by law for general elections, except that no judge, clerk, or other officer of such election, or the county clerk, or other officer of said county, shall be entitled to have or receive any compensation for services rendered in connection therewith.

Sec. 4. Upon the canvass of the vote so cast, the board of canvassers shall make and sign a certificate setting forth the number of votes so cast for the places submitted, and the place having the highest number of votes shall be by them, in said certificate, declared to be the county seat of Meagher county, and such certificate shall be filed in the office of the county clerk: *Provided*, In case of a tie vote between the places named, the place which has been granted the largest sum by subscription toward the erection of county buildings shall be declared the county seat.

Sec. 5. When it shall have been determined by the election that the county seat is changed from Diamond city, and the sum of not less than one thousand dollars shall have been deposited in the county treasurer's office by persons interested in the location of said county seat, as a donation to said county, and a warrantee deed to said county of at least two acres of land, situated at the point to which said county seat has been changed by the vote, shall have been executed and filed in the office of the county clerk, it shall be the duty of said commissioners to immediately thereafter cause the erection of suitable offices for the several county officers, and the county jail, upon said tract of land: *Provided*, That the sum to be expended for such county buildings, and for the removal of the county seat, shall not exceed the sum of one thousand dollars over and above the amount received by subscription therefor.

Sec. 6. It shall be the duty of the county commissioners, within sixty days from the time of the canvass of the vote as required in section 4 of this act, to cause the books, office furniture, and records belonging to said county, to be removed to the place declared to be the county seat by said election: *Provided*, They shall receive a written agreement, signed by two or more responsible persons, and approved by the chairman of said board,

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guaranteeing to said county the free use of a hall, which may be by said board deemed suitable for a court room, for the use of the district court for a term of five years from and after the removal of said county seat.

Sec. 7. If upon the canvass of the vote at the election provided for in this act, the said county seat shall not be removed from Diamond city, the county commissioners are authorized, upon receipt of a petition signed by 100 voters of said county, to submit the said question of the removal of the county seat to the voters of said county at the next general election: *Provided*, That no election shall be ordered, or held, under the provisions of this act until the county commissioners of said county shall have received a petition, signed by at least 100 voters of said county, asking for the removal of the county seat of said county.

Approved February 21, 1879.

AN ACT to enable the county of Gallatin to erect a court house and jail in said county.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the county commissioners of Gallatin county are hereby authorized and empowered to issue, on the credit of said county, coupon bonds, to an amount not exceeding the sum of twenty-five thousand dollars, or so much thereof as may be necessary, to enable them to erect a court house and jail, which said bonds shall be redeemable at the pleasure of said county after seven years from their date, and shall be dated on the day of their issue, and shall become due and payable fifteen years from their date.

Sec. 2. Said bonds shall be of the denominations of fifty, one hundred, five hundred, and one thousand, dollars each, and shall bear interest at a rate not exceeding eight per cent. per annum. They shall be in such form as the board of county commissioners may direct, and they shall be signed by the chairman of the board of county commissioners, and the treasurer of said county. They shall also be sealed with the county seal of said county, and countersigned by the clerk of said county. The coupons attached to the bonds shall be signed by the chairman of said board, the

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treasurer of the county, and the county clerk Each bond issued shall be registered by the said county treasurer, in a book provided for that purpose, and such registration shall show the number and amount of each bond, and when and to whom issued; and the faith of said Gallatin county is hereby pledged for the payment of the interest and the redemption of the principal of said bonds.

Sec. 3. For the purpose of carrying into effect the provisions of this act, the said commissioners are hereby authorized to have engraved, or lithographed, at the lowest possible rates, suitable bonds with coupons attached, and shall pay therefor out of any moneys in the treasury of said county not otherwise appropriated.

Sec. 4. The said county commissioners shall, whenever it becomes necessary, order a sale of the bonds provided for in this act. Such sale of bonds shall be by public auction, to the highest bidder for cash, and for not less than their par value, and shall be made at the door of the court house in said Gallatin county. Notice of the time and place of such sale shall be given by advertisement in one or more newspapers, published in this Territory, for a period of not less than four weeks prior to the time of such sale, and in like manner, by giving notice in one or more weekly newspapers, published in the city of New York, State of New York, for a period of not less than four weeks; said notice to be given in said weekly newspaper or newspapers sixty days prior to time of such sale.

Sec. 5. The treasurer of said county shall pay in lawful money of the United States, at the expiration of six months from the date of the issue of each bond, the interest due thereon, and semi-annually thereafter, upon presentation at his office of the proper coupon, which shall show the amount due, and the number of the bond to which it belonged. All coupons so paid shall be reported to the county commissioners at their first meeting thereafter. Should the holders of said bonds, to an amount not less than one thousand dollars, give the treasurer notice, in writing, that they desire the bonds so held by them, and the interest accruing thereon, to be paid at a designated national bank in the city of New York, then the said bonds and coupons, so held by such person or persons, shall be payable at said bank in the city of New York; otherwise said bonds and coupons shall be payable at the office of said county treasurer.

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Sec. 6. The proceeds of the sale of said bonds shall be paid into the county treasury of said county to the credit of the court house fund, and shall immediately become available for the purpose of carrying into effect the provisions of this act.

Sec. 7. The treasurer shall register, in a book to be kept for that purpose, all bonds redeemed by him, which book shall show the amount of bond, its number and date, when and to whom issued, and when and from whom redeemed. Said treasurer shall also write across the face of said bond in red ink the word "Redeemed," with the date of such redemption, and shall subscribe his name thereto. He shall also cancel such bonds with a cancelling stamp.

Sec. 8. This act shall not be so construed as to entitle the county treasurer to any other, or further, compensation than he is now allowed by law.

Sec. 9. The county clerk shall receive, in full compensation for his services in making out and signing, and affixing the county seal to the bonds and coupons contemplated in this act, the sum of fifty cents for each bond issued, anything in the law regulating the fees of county clerk to the contrary notwithstanding.

[The foregoing act, having been presented to the governor of Montana Territory, on the fifth day of February, 1879, for approval, and not having been returned by him to that House of the Legislative Assembly in which it originated within the time prescribed by section 1842, chap. 1, title XXIII, revised statues of the United States, has become a law without his approval.]

AN ACT to amend the Helena incorporation act.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section two of an act entitled "An Act to incorporate the town of Helena," approved February 11th, 1876, be, and the same is hereby amended so as to read as follows:

Sec. 2. That the following described territory shall, for the present, comprise the said town, to-wit: The south west quarter of the north east quarter, the north west quarter of the north west quarter, the south half of the north west quarter, the south west quarter, and the west half of the south east quarter of section thirty

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(30); and the west half of the north east quarter, the north west quarter, and the north west quarter of the south west quarter of section thirty-one (31), in township ten (10) north of range three (3) west; the south east quarter, the south half of the north east quarter, and the north east quarter of the north east quarter of section twenty-five (25); and the north half of the south east quarter, and the northeast quarter of section thirty-six (36), in township ten (10) north of range four (4) west of the principal base and meridian in the Territory of Montana.

Sec. 2. That section twenty, of article seven, of said act, shall be amended so as to read as follows:

Sec. 20. That the police magistrate shall have jurisdiction in all cases arising for a violation of the city ordinances, and he shall have authority to administer oaths, take acknowledgments of deeds and other instruments to be recorded, and take depositions.

Sec. 3. That section twenty-two, of article seven, of said act, shall be amended so as to read as follows:

Sec. 22. That there shall be a police magistrate, city clerk, city assessor, city treasurer, and city marshal, appointed as herein provided. The city clerk, city assessor, city treasurer, and city marshal, in addition to the specific duties herein prescribed, shall severally discharge the duties usually pertaining to said offices respectively, and the manner thereof may be prescribed by ordinance.

Sec. 4. That section twenty-four, of article seven, of said act, be, and the same is hereby, amended so as to read as follows:

Sec. 24. That W. K. Roberts, Charles Lehman, and John H. Ming be, and they are hereby, constituted and appointed to act as commissioners to serve in such capacity until the first board of aldermen of said city shall be elected and duly qualified; such commissioners, or any three of them, shall, if a majority of the electors of said city vote in favor of this charter, within thirty days from the acceptance, as aforesaid, proceed to lay out the territory embraced within the limits of the said city of Helena into four wards, and fix the boundaries of the same; and shall also provide for holding the first election herein appointed in the several wards of said city; shall fix the place for holding said election in each of said wards; shall appoint the persons to act as judges of election in each of said wards, who shall be sworn, and whose places may

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be filled, in case they do not serve, as provided by law in other elections. Said election shall be held, and returns thereof be made and certified, in all respects as provided by law for the election of members of the Legislative Assembly. A copy of said returns of said election shall be delivered to the commissioners, who shall canvass the same within three days from the time received, and the persons receiving the highest number of votes for the several officers to be elected under this act, and the aldermen for each ward, shall be declared by said commissioners, or any two of them, duly elected to said offices. If two or more persons shall, at said election, receive the same number of votes for one of said officers [offices], the commissioners shall determine the same by lot. Thereafter, on the first Monday in each May, each annual election shall take place.

Sec. 5. That, after the organization of the city council, all authority which by special enactments has been conferred on the board of county commissioners of Lewis and Clarke county, or the treasurer thereof, with sole reference to the administration of municipal authority in, and disbursement of funds for the benefit of, said Helena, is, and the same shall then be, vested in said city council.

Approved February 21, 1879.

AN ACT to provide for the payment by Deer Lodge county of certain expenses incurred during the Nez Perces war of 1877.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That for auditing and payment of certain indebtedness incurred by volunteer officers in Deer Lodge county, in equipping and subsisting their men under the call of Gov. B. F. Potts for volunteers during the Nez Perces war of 1877, a claims commission consisting of three members be, and is hereby, appointed to investigate and audit said claims for use of property, supplies and subsistence, and for property receipted for by them and not returned to the owners, which claims shall be presented under oath, setting forth their correctness and the value of said use of property, supplies, subsistence or property. And upon the approval of any of said claims by the claims commission, herein-

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after appointed, or by a majority of said commission, and their certificate that the claim is correct and just, the board of county commissioners of Deer Lodge county are authorized and required to issue a warrant, on the general fund of said county for the amount certified by the claims commission: *Provided*, That in no case shall the aggregate amount of said claims allowed, or the warrants issued under this authority, exceed the sum of three thousand dollars: *And provided further*, That the said claims commission shall have power to reject, or diminish, any or all claims presented.

Sec. 2. The claims commission herein provided for shall consist of Howard H. Zenor, W. Egbert Smith, and Joseph K. Clark, and the commission shall have power to fill any vacancy occurring in its membership.

Sec. 3, The claims commission shall hold its first meeting in the court house at Deer Lodge city on the third Monday of April, A. D., 1879, and shall cause to be published, for three consecutive weeks preceding such meeting, in one or more newspapers published in Deer Lodge county, a notice giving the date and place of said meeting, and notifying claimants to present their claims on that day.

Sec. 4. The commission shall hold its second, and last, meeting at the court house in Deer Lodge city, on the third Monday in May, A. D. 1879, and any and all claims not presented to the commission on or before that day shall be excluded from any benefit under this act.

Sec. 5. The members of this commission shall receive the same compensation per day as is now allowed to county commissioners, and shall be paid in warrants on the contingent fund of Deer Lodge county, but no mileage shall be allowed, nor either session of the commission exceed three days in duration.

Sec. 6. The expenses for per diem, publication, and all other expenses to be incurred by said commission in auditing said claims, shall be audited and paid by the county commissioners of Deer Lodge county, and in no event shall exceed the sum of two hundred dollars.

Sec. 7. The county commissioners of Deer Lodge county shall pay no claims until after the last meeting of the commissioners as

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provided in section 4 of this act, and after all claims certified by such commission have been duly received by the board of county commissioners; and in event the aggregate amount of all claims so certified by such commission shall exceed three thousand dollars, then the county commissioners shall pay said claims *pro rata* to the extent of said three thousand dollars, and no more.

Approved February 21, 1879.

AN ACT to authorize the probate judge of Deer Lodge county, Montana Territory, to convey certain property.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section. 1. That the probate judge of Deer Lodge county, Montana Territory, is hereby authorized and directed to make, sign, seal, acknowledge, and deliver to the Montana Collegiate Institute, a corporation in the Territory of Montana, a good and sufficient deed conveying to the said Montana Collegiate Institute blocks numbered forty-two, forty-three, forty-four, forty-five, fifty-six and fifty-seven, in the town of Deer Lodge, Deer Lodge county, Montana Territory, according to the official plat and survey of said town of Deer Lodge now on file in the office of the county clerk and recorder of Deer Lodge county, Montana Territory; also, all grounds intervening between said blocks forty-two, forty-three, forty-four, and forty-five, and intersecting the same, and designated on said plat of said town as portions of F and Sixth streets, and the alleys in each of said last named blocks: *Provided*, Such conveyance so made by said probate judge shall not, in any manner, interfere with, or divest, any vested right of any individual, corporation or company, in or to any portion of the property hereinbefore described.

Sec. 2. The conveyance mentioned and required to be executed in section 1 of this act, shall be executed by the probate judge, as trustee, as provided in chapter LVII, of "An act revising, re-enacting, and codifying the general and permanent laws of Montana Territory," approved January 12, 1872.

Approved February 21, 1879.

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AN ACT to provide for the support and maintenance of the Philipsburg fire department.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the county commissioners of Deer Lodge county be, and they are hereby, authorized to levy a special tax, not to exceed two mills on the dollar of the assessable property within the limits of the fire district defined in section 7 of this act, for the support and maintenance of the Philipsburg fire department.

Sec. 2. That the said county commissioners shall, at the next regular meeting in March, A. D. 1879, levy said tax for the year 1879, and thereafter it shall be levied in the same manner and at the same time as are the general taxes of said county.

Sec. 3. It is hereby made the duty of the county treasurer of Deer Lodge county to collect said tax, in the same manner, and at the same time, as other taxes are collected.

Sec. 4. This tax shall be known as the Philipsburg fire tax, and shall be paid by the county treasurer to the treasurer of the Philipsburg fire association.

Sec. 5. That the treasurer of said fire association, before any of said tax shall be paid to him as hereinbefore provided, shall file in the office of the county clerk of Deer Lodge county a bond executed to the board of county commissioners of Deer Lodge county, with two or more sufficient sureties to be approved by said board of commissioners, in such penal sum as they may direct, conditioned that he will faithfully and honestly pay out and disburse all moneys that may be paid by virtue of his office under the order of said fire association.

Sec. 6. It is hereby made the duty of the treasurer of said fire association to make a fair, correct, and complete, statement of his receipts and expenditures as such treasurer to the board of county commissioners at their annual meeting, or at such times as they may direct.

Sec. 7. That the limits of the Philipsburg fire district extend from the foot of the grade on the lower road to Flint creek on the west, and one mile south of Main street, and one mile north of Main street, Philipsburg.

Sec. 8. This act shall be in force from and after its passage.

Approved February 13, 1879.

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AN ACT to pay certain indebtedness.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the board of county commissioners of Lewis and Clarke county, in addition to the authority heretofore conferred upon them, may, if there is no money in their hands applicable thereto, and none has been levied to pay any fire warden for the town of Helena, which they have heretofore appointed, proceed at their next, or some subsequent, session to levy a tax to pay such indebtedness, not exceeding one-tenth of one mill on the dollar on the assessed valuation of property in said Helena, and, when raised, to pay any existing indebtedness for such service heretofore actually rendered by any fire warden, so appointed by them; but the amount so to be paid shall not exceed two hundred and fifty dollars; and if more money shall be raised under said assessment the same shall be paid into the treasury of the fire department of said Helena.

Approved February 21, 1879.

AN ACT to provide compensation for the fire warden for the town of Helena.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That from and after the passage of this act the fire warden in and for the town of Helena, in said Territory, shall be appointed by the chief engineer, assistant chief engineer, treasurer, and secretary of the Helena fire department, or a majority of them, at such times as they may deem necessary; and such fire warden shall receive a compensation not to exceed twenty-five dollars per month, to be by them fixed and allowed from time to time, as they shall deem best, which compensation shall be paid out of the annual fire tax in the same manner as other expenses of said Helena fire department are paid.

[The foregoing act having been presented to the governor of Montana Territory, on the thirteenth day of February, 1879, for his approval, and not having been returned by him to that House of the Legislative Assembly in which it originated, within the time prescribed by section 1842, chap. 1, title XXIII, Revised Statutes of the United States, has become a law without his approval.]

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AN ACT providing for a county jail at Butte city, in Deer Lodge county.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That any building which the board of county commissioners of Deer Lodge county may erect, or purchase, at the expense of the county, for the purpose of a county jail at the town of Butte, in said county, shall be for all purposes deemed and held to be a county jail for all purposes of incarceration under the provisions of all statutes of this Territory relating to county jails and imprisonment therein, in like manner as the jail at the county seat of said county.

Approved February 21, 1879.

AN ACT to establish a public highway in township 11, county of Lewis and Clarke.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the highway heretofore dedicated to public use by William H. Ewing and others, and situated in township eleven (11) north of range three (3) west, in the county of Lewis and Clarke, be, and the same is hereby declared and established a county road for the use and enjoyment of the public, subject to, and entitled to, the benefits of the laws of this Territory relative to roads and highways. That the following is a description of the road above named, to wit: Commencing at the S. W. corner of section thirty-two (32), in township eleven (11) north, range three west, and running thence north to the N. W. corner of sec. 29, range and township aforesaid.

Sec. 2. This act to take effect and be enforced from and after its passage.

Approved February 21, 1879.

AN ACT for the relief of A. C. Botkin.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. There is hereby appropriated, out of the Territorial treasury, the sum of eighteen dollars to compensate A. C. Botkin

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for moneys expended as traveling expenses, in coming from and returning to Deer Lodge city, for the purpose of attending as one of the board of canvassers of the vote of the Territory in the year eighteen hundred and seventy-eight.

Sec. 2. The territorial auditor is hereby authorized and instructed to draw his warrant on the Territorial treasurer, for the sum named in the first section of this act, in favor of A. C. Botkin, to be paid out of any money in the treasury not otherwise appropriated.

Approved February 5, 1879.

AN ACT to pay for certain legal services.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. There is hereby appropriated out of the Territorial treasury the sum of two hundred dollars to compensate Wilbur F. Sanders and W. E. Cullen, attorneys at law, for legal services rendered the Territory in defending an action brought by one Albert W. Tanner against Governor Benj. F. Potts in the district court of the 3d judicial district within and for the county of Lewis and Clarke, and also in the supreme court of this Territory.

Sec. 2. The Territorial auditor is hereby authorized and required to draw his warrant on the Territorial treasurer for the sum of two hundred dollars, in favor of Wilbur F. Sanders and W. E. Cullen, to be paid out of any money in the treasury not otherwise appropriated.

Approved February 21, 1879.

AN ACT to provide compensation for certain printing.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. There shall be and is hereby appropriated out of the Territorial treasury the sum of three hundred and forty-three dollars and eight cents, for printing five hundred pamphlets of the auditor and treasurer's reports and marks and brands for the year 1877.

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Sec. 2. The Territorial auditor is hereby authorized and instructed to draw his warrant on the Territorial treasurer for the sum of three hundred and forty-three dollars and eight cents in favor of J. C. Kerley, Hugh McQuaid, and L. F. LaCroix, to be paid out of any money in the treasury not otherwise appropriated.

Approved February 13, 1879.

AN ACT for the relief of St. John's Hospital.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. There shall be, and is hereby, appropriated out of the Territorial treasury, the sum of two hundred and eighty-four dollars and fifty cents, to be paid to Sister Mary Baptiste, superioress of St. John's Hospital, Helena, Montana Territory, for care, maintenance and burial expenses of Charles Smith, from May 1st, 1877, exclusive, to Aug. 3d, 1877, inclusive; and for care and maintenance of William Coppic from Oct. 31st, 1877, exclusive, to February 14th, 1878, inclusive. And the Territorial auditor is hereby authorized and directed to draw his warrant on the Territorial treasurer for the above amount in favor of said person, to be paid out of any money in the treasury not otherwise appropriated.

Approved February 15, 1879.

AN ACT to change the name of Sarah A. Merrell to Sarah A. Murdock.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the name of Sarah A. Merrell, now of Clear creek, in the county of Deer Lodge, Montana Territory, be, and the same is hereby, changed to Sarah A. Murdock, which she shall be entitled to assume and be hereafter known by.

Approved January 28, 1879.

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AN ACT to change the name of Sing On to the name of George Taylor.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the name of Sing On, of the county of Lewis and Clarke, in the Territory of Montana, be, and the same is hereby, changed to George Taylor, which he is hereby authorized to assume, and by which he shall hereafter be known.

Approved February 5, 1879.

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RESOLUTIONS.

Council Joint Resolution appropriating money to pay clerks.

Resolved by the Council and House of Representatives of the Legislative Assembly of the Territory of Montana:

There is hereby appropriated out of the Territorial treasury, out of any moneys not otherwise appropriated, the following named sums of money in favor of the following named persons, respectively, for services rendered the Legislative Assembly: David Marks, one hundred and sixty-five dollars; Charles L. Williams, forty dollars; William H. Sutherlin, one hundred and twenty-five dollars; S. C. Gilpatrick, one hundred and eighty dollars; F. Gilbert, thirty-five dollars; Geo. D. C. Hibbs, five dollars; and the Territorial auditor is hereby authorized and directed to draw his warrants upon the Territorial treasurer in favor of the above named persons for the above named sums, respectively.

Approved February 21, 1879.

House Joint Resolution declaring valid the organization of Custer county, and acts of officers thereunder.

WHEREAS, Since the adjournment of the last Legislative Assembly, an exigency arose whereby the governor was induced to appoint county commissioners for the county of Custer, who entered upon the discharge of the duties of their office, and an organization, in fact, of said county was had, and which still exists; and

WHEREAS, doubts have existed as to the legality of said organization: Now, therefore, be it

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Resolved by the Council and House of Representatives of the Territory of Montana:

That the said organization of Custer county, and all the acts of said county commissioners accordant with law, and of the other officers of said county, appointed by them, or elected at the late general election, and which are in pursuance of the laws of this Territory, be, and the same are hereby, declared as valid, to all intents and purposes whatever, as if the appointment of said county commissioners had been expressly authorized by law.

[The foregoing resolution, having been presented to the governor of the Territory of Montana, on the eighteenth day of January, 1879, for his approval, and not having been returned by him to that House of the Legislative Assembly in which it originated, within the time prescribed by section 1842, chap. 1, title XXIII, Revised Statutes of the United States, has become a law without his approval.]

House Joint Resolution authorizing certain committees to employ clerks.

Be it resolved by the Legislative Assembly of the Territory of Montana:

That the judiciary committee, and the committee on ways and means, of each branch of said assembly be, and they are hereby, authorized and empowered to employ additional clerks, not to exceed two in each House, whose duty it shall be to assist the chief clerk, and enrolling and engrossing clerk, and the various committees of the two Houses, and perform such other duties as may be assigned them; and for such service they shall be entitled to receive the sum of five dollars per day, each, for the time actually employed in such service.

[The foregoing resolution, having been presented to the governor of the Territory of Montana, on the twentieth day of January, 1879, for his approval, and not having been returned by him to that House of the Legislative Assembly in which it originated, within the time prescribed by section 1842, chap. 1, title XXIII, Revised Statutes of the United States, has become a law without his approval.]

House Joint Resolution appointing committee to accept printing proposition.

Be it resolved by the Legislative Assembly of the Territory of Montana:

That a committee of three from each house of said Legislative Assembly be appointed and empowered to accept, on behalf of the said Legislative Assembly, the proposition of Messrs. Kerley,

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McQuaid & LaCroix to do the necessary printing of this session; but it is distinctly herein expressed that no liability is to be considered as being incurred by the Territory under any contract, or contracts, made hereunder.

Approved January 21, 1879.

House Joint Resolution asking the establishment of Montana as a separate Military Department, and the appointment of General Nelson A. Miles as commander thereof.

Resolved by the Legislative Council and House of Representatives of the Territory of Montana:

That it is the judgment of the Legislative Assembly of the Territory of Montana that the insecure position of the settlements within this Territory from hostile Indians is greatly augmented by the remoteness therefrom of the General commanding the Department, and that the imminence of danger from such Indians requires that a separate Department be organized comprising this Territory; and that General Nelson A. Miles, by reason of his familiarity with the topography of the country and the character of the Indians, and many soldierly qualities, exhibited in various positions and on many occasions, is signally fitted to command the same.

Approved February 5, 1879.

House Joint Resolution referring to information concerning Montana.

Resolved by the Council and House of Representatives in Legislative Assembly convened:

That for the purpose of accepting the proposition of Mr. Robert E. Strahorn to furnish ten thousand copies of the matter which is to comprise seventy pages of his forthcoming book concerning Montana, its topography, climate, resources, and the inducements which it offers to immigrants, with additional matter descriptive of the methods by which the Territory can be most easily and cheaply reached by rivers and railroads, to be approved by the governor and treasurer of the Territory, the sum of seven hundred and fifty dollars be, and the same is hereby, appropriated out of any moneys

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in the Territorial treasury not otherwise appropriated; of which said sum, six hundred and fifty dollars, or so much thereof as shall be necessary, shall be paid to the said Robert E. Strahorn, whenever he shall have delivered to the auditor of this Territory, or his agent in the city of Chicago, the said ten thousand copies of said pamphlet in compliance with his said proposition; and one hundred dollars thereof shall be disbursed under the supervision of the auditor of the Territory in paying freights on said books to the Territory of Montana, and distributing the same therein; and the auditor is hereby authorized to draw his warrant, or warrants, on the treasury of the Territory as may be necessary and convenient, and in favor of such person, or persons, as will carry into effect the provisions hereof, not exceeding said sum; and of the said pamphlets, four hundred copies may be furnished on request of the boards of county commissioners to each county of the Territory, and the like number to the corresponding secretary of the Historical Society of Montana, and also to the secretary of the Helena Board of Trade, the freight thereon from Helena being paid by the said counties respectively. And the further distribution thereof shall be directed by the governor, auditor, treasurer, and superintendent of public instruction of the Territory of Montana.

Approved February 20, 1879.

House Concurrent Resolution requesting the county clerk of Missoula county to furnish a statement of the financial condition of said county.

Resolved by the Legislative Assembly of the Territory of Montana, the Council concurring:

That the county clerk of the county of Missoula be, and he is hereby, requested to furnish the Speaker of the House, and President of the Council, without delay:

1st. The amount of county bonds of said county outstanding and overdue, with the rate of interest which said bonds bear, and the amount of interest due thereon;

2d. The amount of county bonds of said county outstanding and not yet due, and when they will become due, with the amount, if any, of interest overdue, and the rate of interest which they bear, and the amount of interest which is now due thereon;

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3d. Under what laws the said bonds were issued;

4th. The amount of outstanding warrants which bear interest, and the rate of said interest, and the total amount of interest due thereon;

5th. The amount of outstanding warrants which do not bear interest;

6th. The amount of moneys received into the county treasury, for county purposes, from all sources, during the year 1878;

7th. The amount of moneys in the county treasury to credit of the various funds of the county;

8th. The amount disbursed during the year 1878 for the prosecution and punishment of criminals.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Concurrent Resolution in relation to the financial affairs of Missoula county.

Resolved by the Legislative Assembly, the Council concurring:

That it is the sense of the Legislative Assembly of the Territory of Montana, that the indebtedness of the Territory, and of each county and municipality therein, should be paid according to the terms of the contracts therefor, and that the Legislative Assembly should furnish any necessary legislation to enforce such payment if it shall seem to be required.

That in consideration of the exceptional condition of Missoula county, resulting largely from criminal prosecution at a time when that county was overrun with a transient population in mining camps remote from its county seat, the committees on ways and means be requested to inquire if the public interests will not justify some assistance by the Territory to that county, and, if they will, to devise the method by which it can be most efficiently rendered.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

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MEMORIALS.

Council Joint Memorial asking the establishment of a cavalry post at, or near, Henry's Lake.

To the Honorable George W. McCrary, Secretary of War:

Your memorialists, the Legislative Assembly of Montana, would respectfully represent that the interests of the people of south-eastern Montana would be greatly promoted, and the settlement of that section hastened, by the establishment of a cavalry post at or near Henry's lake, near the head of the Madison river.

Henry's lake is on the trail taken by the hostile Nez Perces Indians in 1877, and the hostile Bannacks in 1878, in their passage from Idaho Territory into the valley of the Yellowstone; and it is by this route that all hostile Indians in south-eastern Montana, or Idaho, will in the future endeavor to make their way to the valley of the Yellowstone, and from thence to British America, it being the only route north of the South Pass, that is now open to their passage; and the tribe known as Ten Doy's Bannack Indians, which have heretofore had a reservation at or near Fort Lemhi, in Idaho Territory, having been ordered to remove to the Fort Hall Agency, serious apprehensions exist lest they may (or a portion of them) open hostilities during the coming season, in which case they will undoubtedly try to make their way to the north and east, by way of Henry's lake and Clark's Fork of the Yellowstone.

The people of this section of the Territory are largely engaged in raising horses and cattle, and during the past two seasons have

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sustained great loss by the frequent incursions of those hostiles, and their property is continually exposed to raids from the Indians traversing that country from Idaho. A cavalry post at that point will hereafter prevent the Indians from passing into the National Park and from thence into the settlements of the eastern portion of the Territory. And your memorialists will, as in duty bound, ever pray.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL.
President of the Council.

Council Joint Memorial in relation to the enlargement of the United States Penitentiary of Montana Territory.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Council and House of Representatives, composing the Legislative Assembly of the Territory of Montana, most respectfully represent that the United States has entered into a contract with the Territory of Montana by which it has undertaken the custody and maintenance of Territorial convicts; That the United States Penitentiary at Deer Lodge contains but twenty-eight cells, and that a greater number of prisoners cannot be confined therein without danger to their health and security; That the present number of prisoners is thirty-four, and that this number will be considerably increased within a few months, and continue to increase with the now rapid growth of the population of the Territory.

Your memorialists would therefore pray that an appropriation be made during the present session for the enlargement and completion of the Penitentiary in accordance with the plans approved and on file in the Department of Justice. And your memorialists will ever pray.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

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House Joint Memorial asking Congress to make further appropriation to pay the expenses of the eleventh session of the Legislative Assembly of the Territory of Montana.

To the Congress of the United States, now assembled:

Your memorialist, the Legislative Assembly of Montana Territory, respectfully represents: That it has been with great difficulty your memorialist has been able to procure clerks for the compensation allowed by law; and that it is impossible for the number allowed to perform the duties required of them without materially retarding legislation; and that the sum appropriated for the purpose of incidental printing, and publication of the laws, of said session is wholly inadequate therefor:

Wherefore, your memorialist asks that it be authorized to employ an assistant chief clerk, and an assistant enrolling and engrossing clerk, in each branch of said Assembly, at a reasonable per diem therefor, and that an appropriation be made by your body therefor, and that an additional appropriation be made of not less than four thousand dollars for the purpose of such incidental printing and the publication of the acts of said assembly: All of which your petitioner urges as being indspensably necessary for such purposes and for which it prays.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial in relation to the improvement and repair of the Mullan wagon road, built by the Government of the United States during the years of 1859 and 1861, extending from Walla Walla, in the Territory of Washington, to Fort Benton, in the Territory of Montana.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Council and House of Representatives of the Territory of Montana, would respectfully represent to your honorable bodies: That the Mullan wagon road, built by the United States Government, during the years 1859 and 1861, from the waters of the Columbia river to those of the Missouri river,

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from what is known as Six Mile creek, in the county of Missoula, Territory of Montana, to the Spokane river, Territory of Washington, is so out of repair as to be impassable for practical purposes; That no loaded team can pass over the same; That the said Mullan road lies in that portion of Montana, Idaho and Washington Territories where there are but a very few settlers,—in fact along a portion of the road above named there are none; That the Territory of Montana, following the example of the older settled sections of our country, has imposed upon the local communities throughout the Territory the duty of building and repairing roads; That some of them have already expended considerable sums in keeping in repair and improving this road of the general government in other portions of the Territory than those named; That the people of the Territory of Montana, charged with laying the foundations of civil society in this isolated section, in building school houses, churches, court houses, jails, and roads through the settled portions thereof, and in administering the laws, finds itself unable to devote any of its resources to the opening up and maintaining this road.

The road, if placed in a good condition, would be extensively used as a highway for the citizens of Idaho, Washington Territory, and Montana principally, and as a route over which to transport mails, and afford proper communication between these isolated localities, and, we trust, would afford facilities for travel to many in other sections of our common country who, not satisfied with their present abodes, are moving in a restless tide westward to seek new homes and assist in founding new communities. The region the portion of the road named traverses is a most picturesque and entertaining one, and connects two promising and fertile sections of the West, namely: eastern Washington Territory and western Montana. But chiefly would the said road, if placed in good repair, afford means of transporting United States troops and military supplies from one section of that country to the other. There is now a fort established near the town of Missoula, in western Montana, within four miles of this Mullan road. There is also a military post on the said Spokane river. With this road open there would be but little difficulty in transporting troops and supplies from one of these posts to the other in case of Indian difficul-

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ties. If there should be an Indian outbreak in either section, the troops now quartered there, in considering the present condition of the Indians as to arms and ammunition, would be totally inadequate to meet the emergencies. The general government of the United States made an appropriation in 1877 for the improvement and repair of the military road between Sioux City, in the State of Iowa, and Fort Randall, in Dakota Territory. Without disparaging that appropriation, but rather rejoicing that the government has turned its attention in that direction, we submit that the road we have named needs much more the care and liberality of the general government than that road. There is no navigable river between the military post on the Spokane and Fort Missoula, but many a swift mountain stream that must now be forded, and a densely wooded mountain range. For the truth of the above facts we would respectfully refer your honorable bodies to the report of the General of the United States Army, for the year 1877, concerning the same.

Wherefore: Your memorialists pray that your honorable bodies, while mindful of the many wants of the older and more densely populated section of our common country, will not refuse to turn your eyes to this western pioneer community and observe its wants in this particular, and will make a suitable appropriation for opening and repairing said road. And your memorialists will ever humbly pray.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial remonstrating against any radical change in the present system of land surveys.

To the Honorable, the Senate and House of Representatives of the United States, in Congress Assembled.

Your memorialists, the Council and House of Representatives, composing the Legislative Assembly of the Territory of Montana, would respectfully represent to your honorable bodies: That, as the question of a change in the system of surveys of public lands

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is now, as we are credibly informed, being considered in Congress, and various bills have been introduced for that purpose, that we most respectfully and earnestly protest against any radical change in the present system of public land surveys, and especially against the proposed abolition of the offices of surveyors-general, and the concentration of their duties in one surveyor-general with an office at Washington: That the present system is one well adapted to the wants and necessities of settlers upon the public domain, and many years of trial have proved its practical value: That the proposed abolition of the offices of surveyors-general, and the transfer of the records to Washington, would work great delay and injury to parties entering public lands as well as those engaged in mining and desirous of patenting their claims: That the office of surveyor-general, whatever representations may have been made to the contrary, is not a sinecure, and that a proper administration of its duties requires more than average ability, constant care and a minute attention to details: That the presence, in each surveying district, of a responsible head acquainted with the needs of the public, personally supervising the details of office work, and inspecting surveys in the field, is an absolute necessity to the faithful execution and recording of surveys.

Your memorialists therefore most respectfully and earnestly request that the present system of surveying public lands may remain unchanged. And your memorialists will ever pray, etc.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial to the President of the United States, petitioning for the erection of the two military districts of Montana into a military department under the command of Brevet Major General Miles.

To His Excellency, the President of the United States:

Your memorialists, the Council and House of Representatives, composing the Legislative Assembly of the Territory of Montana, respectfully represent: That the treaty Indians domiciled upon reservations within the geographical limits of our Territory are,

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without a tribal exception, nomads, and as such are seldom upon their reserves, but roam at will through our agricultural and pastoral regions, frequently entailing losses upon our settlers, and, in periods of apprehension of Indian outbreaks, always exciting the same by their absence from their reserves and their bold and intimidating demeanor toward the whites, whereby they have caused, and will continue to occasion so long as they are permitted to pursue their savage pastimes beyond the limits of their reservations, the fear of danger and the partial or total suspension of all industries in those parts of our Territory visited, or traversed, by them while engaged in their nomadic pursuits.

They annually pass through portions of our larger settlements on their progress to the buffalo country north of the Yellowstone river; and this is especially the case with the Indians domiciled at the Lemhi Agency in Idaho Territory, who annually pass through the counties of Beaverhead, Madison and Gallatin and burn the fences, and in some instances, the hay and grain stacks, of our people, threaten the destruction of other property belonging to them, burglarize isolated stores, and steal, take and carry away such goods of the settler as they may see fit to appropriate.

Bands of Indians also traverse the counties of Missoula, Deer Lodge, Lewis and Clarke, Choteau, and Meagher in Montana, beyond the limits of their reservations; and this is especially so with those belonging to the Pen d'Oreille tribe, who ravage and lay waste, by burning the prairie grasses thereof, a large area of the public domain therein, now occupied by many of our citizens for pastoral purposes, and which supports large and valuable herds of cattle, horses and sheep; and who also at each of their predatory incursions thereon, which occur often during each year, not only take and appropriate, without any compensation to the owners, numbers of such cattle, horses and sheep, but who, adding insult to injury, wantonly and maliciously destroy many of their cattle when they do not require the same as food, or for any purpose, and leave their carcasses to rot upon the plains.

We believe that if the two military districts, at present embraced within the Territory, were erected into a military department and placed under the command of Brevet Maj. Gen'l Nelson A. Miles, Colonel of the Fifth U. S. Infantry, with instructions to confine and

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keep such Indians to and upon their respective reservations, or to provide such of them as are or may be permitted to depart from the same, for any proper purpose, with a suitable and sufficient military escort to protect the property of our citizens and prevent the depredations above complained of, a greater degree of security would be established in our midst, and particularly among our exposed and defenseless settlers, immigration would receive an added encouragement, and all our industries advanced and promoted, and their fruits increased.

We therefore urge such action upon the part of your Excellency as will tend to the attainment of such beneficent ends. And your memorialists, as in duty bound, will ever pray, &c.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial asking that the treaty between the United States and China be modified.

To His Excellency the President of the United States, and the Senate:

Your memorialists, the Council and House of Representatives, composing the Legislative Assembly of the Territory of Montana, would respectfully represent: That the presence of the Chinese among us is an evil of great magnitude; they are incapable of assimilation in sentiment or habits of life, except in rare instances; that they are governed by a system of laws peculiar to themselves, and have their own secret tribunals for the administration of justice, and, wherever they are found in considerable numbers, they are absorbing all branches of manual and mechanical labor, and thus driving from most ordinary pursuits the middle and poorer classes of our people.

We believe the inevitable result of Chinese immigration will be to create both an aristocratic and a servile class, which would be contrary to the genius of our form of government; that the habits and mode of life of these people, such as the general absence of family ties, of fixed homes, and of decent social life among them,

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enable them to live and accumulate money upon wages which would starve any other class of laborers, and their savings are very rarely invested in the communities where they live, but are sent to their own country, and by these means they escape taxation, and any considerable share of the burdens of government; and by these means they also drain into their own country the capital of those localities in which they live.

It is a matter of common report, well known to all, that with few exceptions, the Chinese women who come, or rather who are brought, to the Pacific coast, and they are many, belong to the lowest and cheapest class of prostitutes, and that many of them are a prey to the most loathsome diseases; and it can readily be imagined that a frightful train of evils must follow the introduction of these women into any community. In addition to this, slavery in its worst form exists, and is a recognized institution, among the Chinese in our midst, for these degraded women are bought and sold like so many dumb brutes, and have no rights whatever that their Chinese lords and masters are bound to respect.

In view of the above facts, your memorialists would respectfully urge and request that steps may at once be taken to the end that the treaty, now existing between the United States and the Empire of China, may be so modified as to permit the prevention of further immigration of an undesirable and non-assimilating population. And your memorialists, as in duty bound, will ever pray.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial asking the transfer of the management of Indian affairs to the War Department.

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Council and House of Representatives, composing the Legislative Assembly of the Territory of Montana, would most respectfully represent to your honorable

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bodies: That the Territory of Montana is peculiarly exposed to Indian wars, depredations, and incursions because of the presence within her boundaries of large tribes of semi-hostile Indians, and that similar large and semi-hostile tribes are found on all sides of the Territory, and immediately adjacent thereto; and, that in view of the past experience of our people, we are fully convinced that their safety, welfare and best interests would be greatly promoted by the transfer of the bureau of Indian affairs to the war department.

Wherefore, your memorialists earnestly pray that said transfer of the management of Indian affairs to the war department may be made. And, as in duty bound, your memorialists will ever pray, etc.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial asking modification of the law imposing a penalty for driving stock over an Indian reservation.

To the Honorable Carl Schurz, Secretary of the Interior:

Your memorialists, the Council and House of Representatives, constituting the Legislative Assembly of the Territory of Montana, would respectfully represent: That since the flight of Sitting Bull and his followers into British America, and since the establishment of Forts Keogh and Custer, near the Yellowstone river, the old Powder river route, from Bozeman, in Montana, to the Union Pacific railroad at Pine Bluffs, has been open and safe to travel; that during the past year several large herds of beef cattle have been driven from near Helena, Montana, to Pine Bluffs, and shipped thence east by rail; that the U. S. Indian Agent of the Crow tribe of Indians, acting under authority of the United States Statutes at Large of the 43d Congress, to-wit: "Section 2117. Every person, who drives or otherwise conveys any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of one dollar for each animal of such stock," did cause one

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drove of cattle to be stopped last fall, whilst crossing over said Crow Indian reservation, and the owner to be arrested and detained at Fort Custer until he could procure bonds that he would pay said penalty of one dollar per head, subject to the decision of the commissioner of Indian affairs, whose decision was that the said penalty must be paid. The owner was compelled to pay the one dollar for each of the cattle which he was driving to market, the sum collected amounting to about six hundred dollars. This man's stock was not driven upon the reservation for the purpose of ranging or grazing thereon, but because the best and shortest route to a shipping point on the U. P. railroad lay across said reservation. Now, the Crow Indians are friendly to the whites, and are permitted by their treaty to roam and hunt all over the country surrounding their reservation; and, so far as is known, they have not protested against, or objected to, white men passing through or across their reservation with droves of cattle or stock of any kind, or even to their living upon the reservation, as is abundantly evidenced by the fact that on the west end of their reservation is a considerable settlement of white men who have lived there since 1864-5: And furthermore, Fort Custer is built upon the eastern end of said reservation, and hundreds of white men and animals are continually passing on that portion of said reservation without any protest from either agent or Indians, and that the arrest, and being compelled to pay the penalty before mentioned (although supported by law), appears to be an arbitrary proceeding, as other like infractions of the treaty, both before and since said arrest, have not been noticed by said agent.

The route across said reservation is some four hundred miles shorter than the one we have been compelled to use in reaching an eastern market since the closing of the Powder river route in 1868. It also shortens up railroad transportation about five hundred miles, and enables the people of Montana to save one hundred and twelve dollars on each car load of cattle shipped to Chicago.

These explanations will enable you to readily perceive how important it is to the great and rapidly increasing stock interests of Montana, that this, the shortest and cheapest, outlet to the eastern market should not be closed to us: Therefore your memorialists would respectfully ask that you will speedily take such steps as

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will secure such modifications of existing laws as will result in giving our people the right to drive their flocks and herds across said Crow Indian reservation, and all other Indian reservations within the limits of the Territory, by the shortest and best routes, under such rules and regulations as you may prescribe. And as in duty bound your memorialists will ever pray.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial in relation to military telegraph.

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Council and House of Representatives of the Territory of Montana, do hereby represent to your honorable bodies: That the military telegraph, lately constructed by the government, from Deadwood, in Dakota Territory, to Fort Ellis, by way of Forts Keogh and Custer, affords a rapid and important communication between these forts and the military commander of the Department, and the Commander-in-Chief of the Army at Washington, a measure which had become indispensable for the better management of the troops and the Indian situation in this Territory; and, believing that the interests of the government would be further subserved, and the business of this Territory promoted, and a feeling of security from sudden attacks from hostile Indians on our borders strengthened, by a continuation of the military telegraph from Fort Ellis, through the capital of Montana, to Forts Logan, Shaw, Benton, Assinaboine, Wolf Point, Fort Peck Agency, and Fort Buford, at or near the head of navigation on the Missouri river, and along our exposed northern border, we, your memorialists, pray that your honorable bodies will provide for the construction of the military telegraph to the points indicated, which, as computed by the route designated, is distant only two hundred and forty-eight miles from Fort Ellis.

And your memorialists would further respectfully represent the

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necessity of the construction of a branch of said telegraph, by way of Virginia City, Bannack City, Big Hole Prairie, Fort Missoula, and Spokane bridge, to Fort Walla Walla, which would enable the military to have timely notice of any uprising among the tribes of Indians in Washington and Idaho Territories, and also in western Montana, and thus be enabled to prevent such hostile bands from entering and passing through our settlements, as did the Nez Perces in 1877, and a portion of the Bannacks in 1878. And your memorialists will ever pray, etc.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial asking for additional improvements on the Yellowstone and upper Missouri rivers.

To the Senate and House of Representatives, in Congress assembled:

Your memorialists, the Legislative Council and House of Representatives of the Territory of Montana, respectfully show unto your honorable bodies: That the populations and industries of the Territory of Montana are rapidly increasing, and, that the tonnage imports as well as exports is much larger each succeeding year. Our lines of communication with the markets of the country are long, and their condition heretofore has operated to retard the growth and burden the industries of our Territory. The upper Missouri river is navigable to the Rocky Mountains, and for one hundred and fifty miles along the base of said mountains above the Great Falls of said river, and one or more steamboats are now in course of construction at Pittsburg which will be placed on said portion of said river during the coming season. The increasing use of this river as a highway of commerce dictates that its navigability be improved. Above the Great Falls there are a number of places where a small sum of money would remove obstructions and render its use for the purposes of commerce of great value to our people. This river is destined to be the highway over which the citizens of the northern portion of the Territory will receive their heavy freights, and its improvement is the dictate of

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wisdom as it is a necessity of our situation. Equally useful to the people of the southern portion of this Territory is the Yellowstone river, which penetrates that region with its navigable waters for several hundred miles in length, and which, notwithstanding several rapids of considerable difficulty, has been utilized during the past year for the purpose of commerce by steamboats with considerable cargoes of merchandise for our people. If, added to these considerations, we shall recall to you the considerable military posts and Indian agencies, which derive their supplies by means of these lines of communication, the rapidly increasing settlements along them, and the interest which the general government has heretofore evinced in the commerce of the country, we shall present good reason for asking you to make appropriations for the improvement of these particular streams at the points indicated. And, as in duty bound, your memorialists will ever pray, &c.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial asking for the establishment of a United States Land Office at Miles city, Custer county, Montana Territory.

To the Honorable, the Senate and the House of Representatives of the United States, in Congress assembled:

Your memorialists, the Council and the House of Representatives of the Territory of Montana, would most respectfully represent: That there has been, during the year 1878, 318,000 acres of public lands surveyed, and 120,000 acres [are] now under contract to be surveyed before the end of the fiscal year ending June 30, 1879, making 438,000 acres of public land, within the limits of Custer county, subject to pre-emption and homestead entry; and that by reason of the fact that the land office to which the public lands of Custer county is attached is 448 miles from Miles city, the county seat of said county, it is impossible, by reason of the great expense, for the settlers of that county to enter said lands under existing laws.

We would most respectfully pray for the establishment of a land

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office at the county seat of said Custer county, that the large and constantly increasing population of that county may be enabled to avail themselves of the benefit of the land laws of the United States, which, by reason of their long distance from the present land office they are now unable to do; that the country asked to be embraced in the new land office district is composed of many fertile valleys, and is a fine stock-growing country, and the establishment of such land office will throw many thousands of acres of land into the market, and increase the revenue of the government; That it would aid very materially in developing said country, and the further settlement of the same. And your memorialists, as in duty bound, will ever pray.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial in relation to restoring a portion of the Crow Indian Reservation to the public domain.

To the Honorable, the Secretary of the Interior of the United States:

Your memorialists, the Legislative Assembly of the Territory of Montana, would respectfully represent to your Honor: That a small portion of the Crow Indian reservation, in said Territory, included in the following boundaries, to-wit: commencing at the mouth of the Big Boulder, on the east side of the Yellowstone river; thence up said Boulder river to the head or source of the east fork of the same; thence south to the north boundary of the National Park; thence west to the Yellowstone river; thence down the middle of said stream to the place of beginning, is a rich mineral country, both in placer and quartz mines, embracing Emigrant, Bear, and Cement gulches, together with a number of gold-bearing quartz lodes that are supposed to be rich; That these placer mines were discovered, taken up, and worked by actual settlers, long prior to the time that the said section of country was set apart as a portion of said Indian reservation, but the fact that the said mines are situate upon an Indian reservation as aforesaid has retarded their

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development for a long space of time, and has prevented the working of the quartz mines entirely, thereby depriving the Territory and the government of a considerable revenue from that source; That, owing to the fact that large game is very scarce in the vicinity, the Indians very seldom, or never, visit that section of the country for any purpose whatever; That it is still occupied by about two hundred actual and *bona fide* settlers, who are engaged in farming, stock-raising and mining, and who are desirous of obtaining title to their property, in order that they may erect with safety the necessary machinery to work said mines more successfully.

Wherefore, your memorialists pray that a commission be appointed, with authority to treat with said Crow Indians for said portion of said Crow reservation, that the same may be restored to the public domain, and declared open to settlement. And your memorialists will, as in duty bound, ever pray.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial in relation to a public highway from the head of navigation to and through the National Park.

To the Honorable, the Senate and House of Representatives of the United States of America, in Congress assembled:

Your memorialists, the Legislative Council and House of Representatives of the Territory of Montana, would respectfully represent to your honorable bodies: That the highway now leading from the mouth of the Big Horn river, (the head of navigation on the Yellowstone,) to the National Park is now a tri-weekly stage route, and a telegraph line has been constructed over it. This road leads over a mountainous, broken country, cut by ravines and deep coulees, which in certain seasons, render it almost impassable: That owing to frequent raids of hostile Indians along the line of said highways there has been but little settlement made in the country traversed by said road, and the few settlers thereon have not been, and are

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not now, able to put said road in a passable condition, or maintain the same in repair: That the increasing travel of tourists to the National Park from the East, and the constant use of said highway by the military, while passing from Forts Keogh and Custer to Fort Ellis, demands that the same be improved and kept in repair, that travel over the same may be rendered safe and practicable at all seasons of the year.

And your memorialists would further represent that there is no public highway through the National Park, only a trail, which has been used by hostile Indians in the past two years in passing from Idaho into the Yellowstone valley: That said trail enters the said Park at, or near, Henry's lake and emerges on the Yellowstone: That a public highway, if opened through said Park, would admit of easy and rapid movement of troops through the same with their transportation, shorten the distance to and from Henry's lake seventy-five miles, and, with a military post at Henry's lake, would afford an effectual barrier to the movement of hostile Indians through that section.

Therefore, your memorialists pray your honorable body to make a sufficient appropriation to open and repair said road, and build said military post at Henry's lake. And your memorialists will ever pray.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL,
President of the Council.

House Joint Memorial asking Congress to pass an enabling act for Montana Territory.

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Council and House of Representatives, composing the Legislative Assembly of the Territory of Montana, would respectfully petition your honorable bodies to pass an enabling act, at an early day, whereby the people of Montana may, in accordance with usual custom, take the necessary preliminary steps for becoming a sovereign state and entering the Union as

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such. Your memorialists would further represent: That, to the best of their information and belief, Montana has a present voting population of about 15,000, and a total population of about 40,000, which will easily be doubled within the present and next succeeding year. Your memorialists join in this petition, not because they are ambitious of an undue preponderance of power in the National Congress, but because this seems to be the only alternative left them to secure the fundamental and inalienable rights of American citizenship, among which have always been accounted a right of representation in the supreme legislative body that enacts the laws that effect their lives, liberties, and property, and a voice in the selection of their rulers.

The adult population of our Territory was reared in the States, and have been accustomed to the full exercise and enjoyment of the rights of citizenship; They have furthermore been educated under the principles of the Declaration of Independence and the Constitution of the United States, to believe that taxation and representation were naturally and necessarily associated, and that governments derived their just powers from the consent of the governed, and naturally they expected to find such principles recognized in any form of government emanating from the Congress of the United States.

We have no voice or vote in the choice of President, or of a single member of Congress, or any other of our rulers. The power possessed by our delegate is scarcely greater than, or different from, the ordinary right of petition possessed by every subject under every form of government. The powers of local legislation are secured to us only under an organic act that is merely an ordinary piece of legislation, subject to repeal and continual alteration, without consultation with, or knowledge of, those to be directly effected thereby. Even within these restrictions our enactments are subject to veto by an executive not chosen from or by our people, nor accountable in any way to them, and also to be annulled by Congress upon a partial hearing and with very imperfect knowledge of the subject.

Our legislators, thus restricted to mere fragments of uncertain power, are also so limited in number as to allow inadequate representation of a Territory so vast and with such a diversity of

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interests. They are further limited in time, and in compensation to the wages of ordinary day laborers, nor are they allowed to make decent provisions for themselves. The result is that they have no sufficient power or independence left to perform their functions in decent self respect, nor usefully to their constituents.

Believing they would dishonor you, themselves, and the very name of American citizenship, to submit to such a servile lot without remonstrance at least, your memorialists address your honorable bodies with confidence that you will give us speedy deliverance, if no other course remains, through an enabling act which shall authorize our people to frame a state government, and thus secure to themselves and posterity those constitutional rights of American citizenship which it seems that only citizens of a State can enjoy.

SAMUEL WORD,
Speaker of the House of Representatives.
ARMISTEAD H. MITCHELL.
President of the Council.

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